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FOURTH ANNUAL POLICE CHIEFS MEETING

(CONFERENCE)

Bentley College
Waltham, Massachusetts

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ATTORNEY GENERAL SCOTT HARSHBARGER

FOURTH ANNUAL POLICE CHIEFS CONFERENCE

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DOMESTIC VIOLENCE UPDATE

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DISTRICT COURT DEPARTMENT OF THE TRIAL COURT

DRAFT STANDARDS OF JUDICIAL PRACTICE
FOR
ABUSE PREVENTION PROCEEDINGS

February, 1994

In February, 1994, the District Court Department of the Trial Court, and the Trial Court itself, each released a draft of Standards of Judicial Practice for Abuse Prevention Proceedings. For the District Court Department, these Standards are intended to replace an earlier version issued in January, 1986, and cover many areas not addressed in the previous document.

The Standards not only review relevant statutory provisions, but also include extensive commentary recommending desirable judicial practices. Although they are still in draft form (and, in fact, will not be binding even when finalized), they have been circulated to all judges and clerk-magistrates with a recommendation from District Court Chief Justice Zoll that they be followed while comments are collected and incorporated.

This Memorandum is intended to highlight several provisions believed to be most relevant to police practices and of greatest interest to officers responding to domestic abuse cases. It will describe the guidance being offered to judges in areas not explicitly covered by statutory provisions.

1. PURPOSE OF C. 209A

The Standards state that the purpose of proceedings under c. 209A "is to adjudicate the need for protection from abuse, and, if that need is found to exist, to provide protective court orders." (1:01) The Standards and Commentary stress the importance of adjudicating each case on its facts AND protecting the rights of the accused. They reflect sensitivity to concerns about orders being issued without an adequate factual basis and stress application of the appropriate standard and burden of proof.

2. MINORS AS PARTIES IN C. 209A ACTIONS

Minor Plaintiff The Standards recommend that if a minor seeks an order against someone who is not a family member or a caretaker, the judge should attempt to secure the presence of a parent or guardian and, if this is not practical, consider appointment of a guardian ad litem for the child. However, they take the position that courts should not refuse needed protection to a minor plaintiff solely because the minor is not accompanied by an adult. (1:06) They note, however, that there may be cases where the age of the plaintiff, or other factors, including the plaintiff's credibility, may lead the judge to deny an order or to delay a decision until a parent or other responsible adult is present (including, in extreme situations, a representative of D.S.S.).

Minor Defendant If the defendant is a minor, the court clearly can issue refrain from abuse and no contact orders. The Standards note that the authority to issue vacate and stay away orders against a minor defendant, requiring the defendant to stay away from his or her own residence, is less clear. If the judge does issue such an order, the judge is advised to ensure that appropriate provision is made for the minor's safety. One means for doing this is to propose care and protection, CHINS, mental health, delinquency, or criminal proceedings, as appropriate.

3. NON-ENGLISH PARTIES

The Standards note that M.G.L. c. 221C sets out a process for providing an interpreter for every non-English speaker in any legal proceeding (1:07), and suggest ways in which an interpreter can be obtained. They recognize that this may not be practical at an ex parte hearing, and acknowledge that an "informal" interpreter who happens to be present in court may be asked to assist in these cases. They stress the importance of the court understanding the plaintiff well enough to decide the facts properly and to assess the danger involved, as well as the importance of the plaintiff understanding any order the court issues and the necessary steps he or she should take to promote safety. However, under no circumstances should the plaintiff or defendant, or anyone accompanying either to court, be allowed to interpret for the opposing party. Similarly, "minor children should not be asked to interpret for their parents unless there is absolutely no alternative."

4. COMPLETING THE COMPLAINT, OBTAINING REQUIRED INFORMATION

The Standards stress that plaintiffs should not be discouraged from filing a complaint because they lack some piece of information requested on the form. They also

recommend use of a Defendant Information Form, to be used to obtain information necessary for a record check, for locating the defendant for service, and for safe service of the order by police. (2:03) If the information isn't readily available, plaintiffs should be instructed to provide it later in the day.

NOTE: In our view, promoting regular use of a Defendant Information Form in your court would be of considerable assistance to the law enforcement community.

5. **REPETITIOUS COMPLAINTS**

The Standards stress that the number of prior appearances in court seeking orders, and the outcome of those appearances, are not relevant to the question of whether protection is needed in a new case. No plaintiff should be discouraged from filing on the basis of past efforts, and each case should be decided on its own merits. (2:06, 3:08)

6. **REFERRAL FOR A CRIMINAL COMPLAINT**

The Standards note that in cases where c. 209A relief alone does not seem adequate to address the threat, referral to the police or to the District Attorney's office may be appropriate, to assess the strength of a proposed criminal action and to provide other relevant information to the plaintiff.

However, they take the position that if the plaintiff is reasonably believed to have been the victim of a serious crime, and an application for a criminal complaint is filed that alleges a felony, or a misdemeanor involving the threat of immediate harm, the criminal process should not be delayed. The hearing may proceed immediately, without any notice to the accused. A warrant rather than a summons may be issued to the accused if probable cause is found. (2:11)

7. **ACTION WHERE PREVIOUS ORDER IN EFFECT**

The Standards note that in mandatory arrest situations (that is, probable cause to believe that a no contact, refrain from abuse, or vacate provision of an order was violated), the plaintiff should not be referred to court by the police to seek a criminal complaint and warrant, nor should the police follow this procedure themselves. However, the Standards state, if this route is taken, the criminal complaint procedure should be followed, to avoid further delay, even if it appears that a warrantless arrest should have been made. (2:12, 8:01)

NOTE: If the defendant cannot be located quickly, we recommend that police seek a complaint and warrant, while continuing efforts to locate the defendant. In these cases, issuance of the warrant allows it to be entered into the computer, so that other officers will know that the defendant is wanted if the defendant is stopped. Also, the arrest warrant would allow police to enter the defendant's home to make an arrest, if the defendant was denying them entry and other grounds for such an entry (such as exigent circumstances) did not exist.

8. **VENUE, TERRITORIAL JURISDICTION FOR C. 209A COMPLAINTS**

Although c. 209A provides that an application should be filed and heard either in the jurisdiction where the plaintiff lives or, if the plaintiff left home to avoid abuse, in the judicial district of either the prior residence or the current residence, the Standards advise that in emergency situations (where the plaintiff is in danger and unlikely to reach the appropriate court the same day), the judge should seek leave from the Regional Administrative Judge to act for the appropriate court and issue the order. (3:03)

9. **COURT ACTION ON DEFENDANT'S DEFAULT, PROBATION, OR PAROLE STATUS**

Standard 3:05 describes the requirements of c. 209A, s. 7, involving a judge's obligations after receiving the results of the search of the statewide domestic violence registry. In addressing the requirement that the judge order notification to "the appropriate law enforcement officials" if a warrant is discovered, the Standard advises that the judge should notify the police department to which the warrant was issued.

10. **EX PARTE ORDERS TO SURRENDER FIREARMS**

The Standards were drafted prior to enactment of the new law regarding suspension of firearms permits and surrender of guns in c. 209A cases. Standard 4:04 addresses temporary orders to surrender firearms and permits issued as an additional provision of an "old" c. 209A order. (4:04)

Under this Standard, if the judge issued such an order and the defendant refused to surrender firearms in response to it, it was noted that a criminal complaint for contempt (not for violation of a protective order) could be sought.

NOTE: The Standard points out that, in an emergency, the complaint could be sought from the Clerk-Magistrate, an Assistant Clerk-Magistrate, or the Emergency Judicial Response Judge. Once the complaint issued, an arrest warrant and a

search warrant could also issue, if justified by the facts and the law. (Surrender of the firearm could then be ordered as a condition of pretrial release.) It appears that this procedure could also be utilized under the new law, when there was probable cause to believe that the defendant possessed firearms which were not being surrendered in response to the court's order.

Also, the Commentary notes the practice of some courts to routinely notify Chiefs of Police whenever an order to surrender firearms is issued, allowing the Chief to initiate revocation of a License to Carry or to seek a criminal complaint for contempt and a warrant if the defendant refuses to comply with the order.

11. **INFORMATION FOR THE PLAINTIFF**

If an ex parte order has been issued, the Standards advise that the plaintiff should be told: (1) of the contents of the order and that it will be given to the police to be served on the defendant; (2) of the date of the full hearing; (3) of the consequences if either or both parties fail to appear at court at that hearing; (4) that the plaintiff cannot "permit" the defendant to violate the order (that is, that any action by the defendant contrary to the terms of the order, until the order is terminated or modified by the court, will subject the defendant to immediate, warrantless arrest and criminal prosecution, regardless of whether the plaintiff consented to the violation); and (5) what to do if the defendant violates the order." (4:06)

12. **SERVICE OF ORDERS**

The court is advised to give the papers to be served to the police department in the best position to make prompt service, and to question the plaintiff if that would be helpful in making that determination. If there is no information on the defendant's likely whereabouts, the papers should be transmitted to the police department of the city or town where the plaintiff resides. The papers can be given to the plaintiff to deliver to the police if this would facilitate transmission, but this should not be done if the plaintiff is reluctant or unable to make delivery.

The Standard also directs that in-hand delivery of an order should be specified on the order, unless the court believes an alternative approach adequate. A permanent order should not issue on the date of the hearing if the return of service is not received by that time and there is no other evidence of notice to the defendant. (4:07)

Another Standard (6:03) urges in-hand service of permanent orders as well, if the defendant is not before the court when the order is issued, regardless of whether the terms of the ex parte order have been changed. Similarly, all modified orders should be given to the police and, if the defendant was not before the court when the order was issued, should be served on the defendant. (6:04)

13. **COURT ACTION ON DEFENDANT'S WARRANT OR PROBATION STATUS**

If the defendant is present at court, and the court is aware of an outstanding arrest warrant, the defendant should be taken into custody. The Standards advise that in this situation, if the court believes that the defendant poses an imminent threat to the plaintiff, but the police holding the warrant decline to come to court to take custody of the defendant, the court "may instruct a court officer to arrest the defendant ... and, if the defendant is not bailed ... order the county jail to transport the defendant to the court that issued the warrant." (5:07)

NOTE: Pending warrant reform legislation, if enacted, will affect court procedures in this area.

14. **MUTUAL RESTRAINING ORDERS**

The Standards state that it is the court's responsibility to decide "who the primary aggressor is, who is in danger from whom, and who needs the court's protection. Only in the situation where each party is genuinely in danger from the other, and proves that circumstance by a preponderance of the evidence, should a mutual order be issued."

It also advises that if a mutual order is issued, the police must be given clear instructions about how it is to be enforced.

The Standard recognizes that "consecutive orders from different District Courts involving the same parties in reverse roles should not be considered 'mutual orders.'" It gives detailed instructions to the courts about how to proceed in these cases. (6:06)

15. **DEFAULT WARRANTS IN CRIMINAL CASES INVOLVING ALLEGED VIOLATION OF A PROTECTIVE ORDER OR ABUSE**

The Standards advise that "default warrants should be issued promptly and their priority communicated to police so that there is no confusion that such warrants are to be executed as soon as possible." (8:08)

16. PROCEDURE FOR RESPONSE TO COMPLAINTS WHEN COURT IS NOT IN SESSION

The Standards advise that when court is not in session, the Clerk-Magistrate should either contact by telephone the Presiding Justice of the Court or another District Court judge, who should hear the complaint ex parte. The complainant should not be told to go to another court or to come back on a day when a judge will be at the court or to wait until the Emergency Response System is in effect.

The Clerk-Magistrate in each court is advised to communicate with each of the police departments within the court's jurisdiction to assure that all emergency restraining orders issued, and any supporting documents, are brought to the court on the next working day after they are issued. It is noted that it is particularly important in courts which do not have sessions every day that the papers be docketed on the next working day, whether or not there is a court session, so the order can be entered into the registry.

Finally, if a Probate and Family Court matter is pending and the emergency judge is made aware of this, the Standards note that it may be appropriate to order the police to return the papers to the Probate and Family Court, and to tell the plaintiff to appear in that court the following day to seek an ex parte order. (11:00)

The Standards include many other provisions, but the ones noted above appeared most relevant to police practices. There will undoubtedly be some changes when the Standards are finalized, but until that time, the Draft can be used to try to improve the consistency of court, police and prosecutor practices.

M E M O R A N D U M

PROPOSED AMENDMENTS TO DOMESTIC VIOLENCE/FIREARMS BILL

I. TEXT OF PROPOSED AMENDMENTS

SECTION ONE. Section 3B of Chapter 209A, as added by Section 6 of Chapter 24 of the Acts of 1994, is hereby amended by inserting after the word "then" in the first sentence the words:- controls, owns or.

SECTION TWO. Section 3C of Chapter 209A, as added by Section 6 of Chapter 24 of the Acts of 1994, is hereby amended by inserting after last sentence the sentence:- Any violation of such orders shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment.

SECTION THREE. Section 6 of Chapter 209A of the General Laws, as appearing in the 1993 Official Edition, is hereby amended by inserting after the word "nine C" in line 72 the words:- or an order issued pursuant to section three B or three C of this chapter.

II. RATIONALE

A. SECTION ONE

The language in the new Section 3B of C. 209A differs slightly in two sentences in the first paragraph and, as a result, we have had reports of defendants being "tipped off" about impending service of an order and acting to thwart the intent of the legislation.

In the third sentence of the paragraph, it states that "Law enforcement officials, upon the service of said orders, shall immediately take possession of all firearms ... (etc.) in the control, ownership, or possession of said defendant." However, the first sentence of the paragraph does not repeat the full language. Instead, it provides that "the court shall, if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, order the immediate suspension and surrender (of gun permits and guns) which (the defendant) then possesses ...." (emphasis added).

We have had several reports of defendants capitalizing on the differences in the language and avoiding the intended impact of the legislation by receiving advance notice that an order was about to be served and giving their guns to a friend or family member to hold for them, then asserting that the guns were not in their "possession" and did not fall within the court's order.

The suggested amendment would correct this seemingly minor discrepancy, further the intent of the legislature, and close the opportunity to manipulate the system.

B. **SECTION TWO**

Suspension and surrender orders can be issued under either of two provisions of the new statute, Section 3B or 3C. One covers the initial, ex parte issuance of a protective order. The other (section 3C) covers a continuation of the initial order or a modification to an existing order, when there is a showing by a preponderance of the evidence that return of the permits/guns, or failure to order their surrender, would create a substantial risk of harm to the complainant.

Section Two would clarify that provisions for enforcement of the court's order (that is, penalties for non-compliance) are the same under both provisions.

C. **SECTION THREE**

Section Three is the most important amendment, critical to law enforcement officers and to ensuring meaningful enforcement of the statute.

Currently, if a suspension and surrender order is issued, and police have probable cause to believe that a defendant is in possession of permits and/or guns, but the defendant fails to surrender them upon request, police arguably must go to court to seek a criminal complaint and arrest warrant (and, most likely, a search warrant) before they can act to enforce the order. (That is because the crime is a misdemeanor which, though it may occur in the officer's presence, arguably may not involve a breach of the peace.)

All other criminally enforceable provisions of restraining orders call for mandatory arrest of the defendant if the police have probable cause to believe the order has been violated.

Given the recognized danger that victims face upon issuance of an order, it is critical that police be allowed to act immediately to enforce gun surrender provisions.

As several police officers have said to me, "If I've got to arrest him if he fails to surrender his keys (part of a vacate order, requiring mandatory arrest), it certainly seems that I should arrest him if he fails to surrender his guns."

This amendment would be consistent with current law, which provides for mandatory arrest in all other situations in which police have probable cause to believe that a defendant has violated a criminally enforceable provision of a restraining order (and, incidentally, the possibility of arrest might lead more defendants to comply with the surrender order rather than face arrest).

COMMONLY ASKED QUESTIONS

FIREARMS AND DOMESTIC VIOLENCE

1. **When does a judge hearing an application for a restraining order have to order the suspension of firearms permits and the surrender of all guns, ammunition and permits held by the subject of the restraining order?**

In every case in which an emergency or temporary restraining order is issued, a judge must include in the restraining order an order compelling the defendant to surrender all guns, ammunition and firearms permits to the appropriate law enforcement officials, and suspending any FID cards or licenses to carry issued to the defendant.

2. **When responding to the scene of a domestic violence incident, when no restraining order is in effect, can a police officer conduct a search for weapons when there is reason to believe that there are guns in the home?**

This is a complex issue in which the specific facts and circumstances of each case will be highly relevant. There are alternatives, short of conducting a full blown search, that could result in removing the weapons from the individual or the premises.

For example, a police officer arriving on the scene of a domestic violence incident can request that the defendant voluntarily turn over his guns to the police, to be kept in temporary protective custody. If the victim and the defendant jointly share the premises, the victim can ask the police to take custody of any guns present, or can consent to a search for weapons and voluntarily relinguish any that are found.

Officers arriving on the scene may also have probable cause to believe that the defendant possesses a firearm unlawfully -- either without a permit of any kind, or possesses unlawful (for example, stolen) guns. In such cases, the officers may use whatever lawful means are available to seize the guns, such as plain view, evidence of a crime, or search incident to arrest. In other circumstances, in order to search for weapons that the police have probable cause to believe the defendant possesses unlawfully, a search warrant should be obtained.

Finally, G.L. c. 209A, § 6 states that whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being

abused, the officer shall use all reasonable means to prevent further abuse. While this language does not explicitly authorize a search for weapons, this broad directive may supply some support for a decision to take weapons into temporary protective custody when police officers believe that they are faced with exigent circumstances and that such action is necessary to ensure the victim's safety. Cf., Commonwealth v. Rexach, 20 Mass. App. Ct. 919 (1985).

In instances where the defendant refuses to voluntarily surrender his guns, and he holds a License to Carry, the Chief of Police who issued the license has the ability and authority to revoke the License to Carry. If the defendant holds an FID card rather than a License to Carry, a record check should be done to determine whether any event has occurred since the defendant initially obtained the FID card, that would allow the card to be revoked. However, if a Chief acts to revoke a License to Carry or an FID card under G.L. c. 140, § 129D, a defendant who appeals the revocation can retain possession until the case is decided.

3. **When serving a restraining order and suspension and surrender order, how do I immediately take possession of all guns, ammunition and gun permits if the defendant tells me that he does not own a gun, although I have reason to believe that he does?**

Police may use all lawful means currently available to take possession of the weapons.

Remember that once the restraining order and suspension and surrender order have been issued, a licensed gun owner is no longer legally in possession of any firearm, ammunition or gun permits. If the police have probable cause to believe that the defendant is in possession of weapons, police may conduct a search without a warrant under any of the established exceptions to the warrant requirement -- typically, consent of a co-inhabitant of the dwelling, plain view, or search incident to arrest.

If none of these exceptions exist, police should seek the issuance of a complaint and arrest warrant, as well as a search warrant when they have probable cause to believe that the defendant has guns and/or permits which he is not surrendering, and adequate information as to where the items can be found. Where the defendant is a licensed gun owner whose permit is now suspended, police

should be able to obtain a search warrant, because G.L. c. 209A, § 3B creates a new misdemeanor offense for the violation of the surrender order. (See also, response to Question 4.)

Where there is probable cause to believe that a defendant possesses guns unlawfully, or possesses stole guns, police should seek issuance of a search warrant for the guns initially, before service of the order, rather than relying on the court's order to surrender them, whenever this will not delay service of the order. This procedure will allow prosecution for the illegal gun possession under G.L. c. 269, § 10. (Otherwise, if the defendant surrenders guns in response to the court's order, this could be considered a compelled surrender of the weapons in violation of the defendant's rights under Article 12 of the Declaration of Rights of the Massachusetts Constitution, in which case the defendant could not be successfully prosecuted for unlawful possession of any guns surrendered.)

4. **Can a defendant be arrested without a warrant for a violation of a surrender order?**

No. The mandatory warrantless arrest provisions in G.L. c. 209A do not apply to a violation of a suspension and surrender order. Therefore, all existing law with regard to arrest applies.

Note that the Draft Standards of Judicial Response for Abuse Prevention Orders recommend that in an emergency, a complaint, arrest warrant and search warrant may be issued by a Clerk-Magistrate, an Assistant Clerk Magistrate, or a judge through the Emergency Judicial Response System during non-court hours. While these recommendations were issued prior to the enactment of the Firearms Law, it appears that this procedure could also be utilized under the new law, when there is probable cause to believe that the defendant possesses firearms which are not being surrendered in response to the court's suspension and surrender order.

5. **What if in-hand service of the suspension and surrender order is not possible?**

In cases where in-hand service of the suspension and surrender order can not be achieved, the language of the order requires that the defendant take affirmative steps to surrender any guns and permits, and designates the department to which they should be surrendered.

6. **What is the duration of an order for the suspension and surrender of weapons?**

The suspension and surrender order lasts for the duration of the restraining order, unless the defendant petitions for review and the court vacates the suspension and surrender order. Once the restraining order expires or is not renewed, the suspension and surrender order is no longer in effect. Keep in mind, however, that in cases in which the defendant has a License to Carry, the Chief of Police who issued the License can still look at the underlying conduct to determine whether or not the defendant is a suitable person for a License to Carry.

7. **What rights do police officers, or others professionals who need to carry a firearm for employment purposes, have once a restraining order is issued against them?**

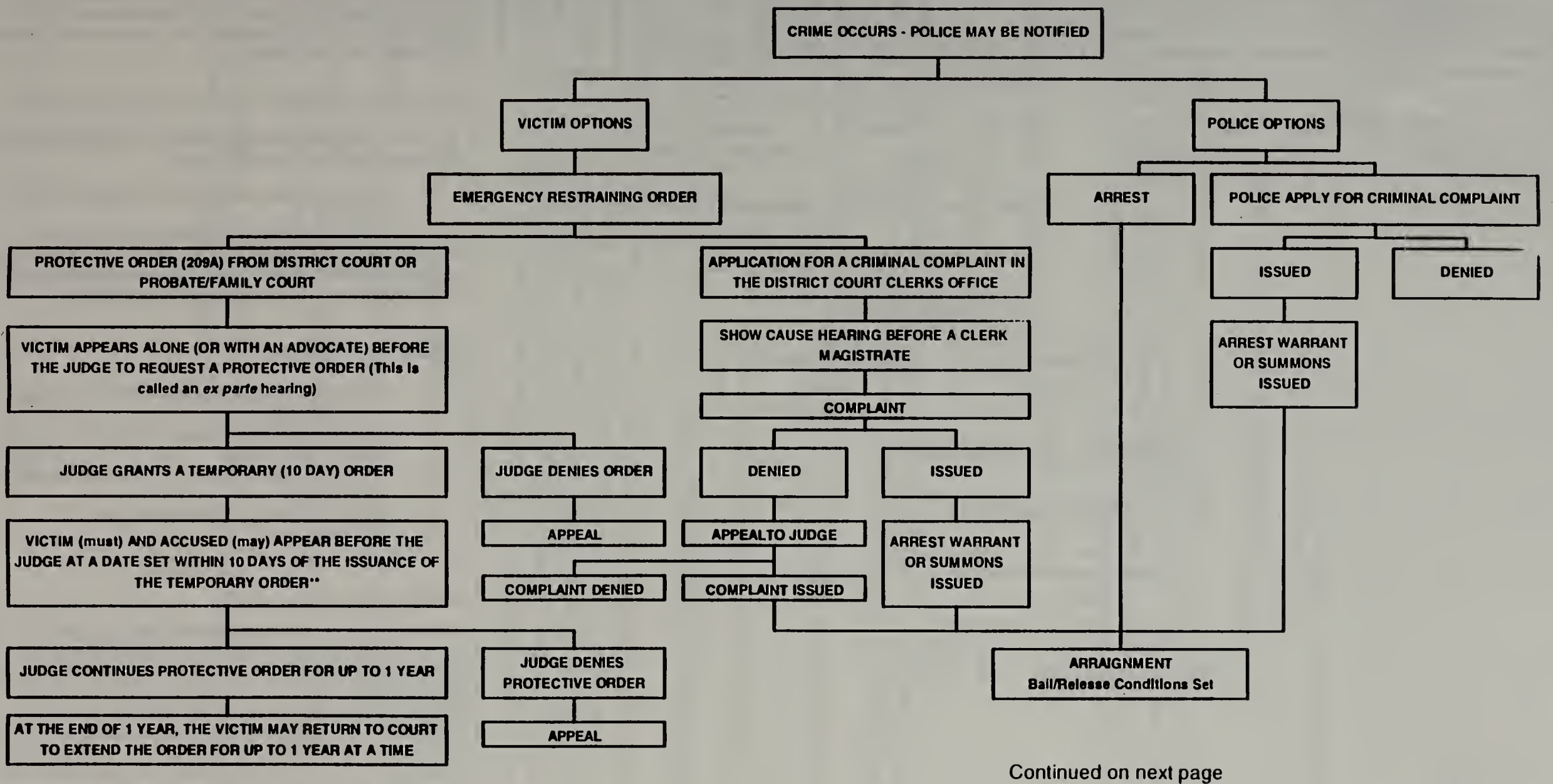
If the defendant files an affidavit that a firearm is necessary for the defendant's employment and requests an expedited hearing, then the defendant is entitled to judicial review of the suspension and surrender order within 2 court business days of the court's receipt of the affidavit and request. At the review hearing, the court will be determining whether return of the items presents a likelihood of abuse to the plaintiff.

8. **If police have seized guns under a suspension and surrender order and the underlying restraining order is not pursued, are the police obligated to return the seized weapons if the defendant lawfully possessed the weapons prior to their seizure?**

In cases where the defendant has a License to Carry firearms, it is likely that the Chief of Police who issued it has the discretion to revoke the license based on the conduct underlying the original restraining order under the "suitable person" standard.

Where the defendant has an FID card, police should conduct a criminal records check on the individual, as well as a review of the Domestic Violence Registry, to determine whether other grounds exist to deny return of the seized items. Police should also check with the victim of the domestic violence incident to determine her level of fear of the defendant, and should seek confirmation that the order is actually vacated prior to turning over the weapons.

A CHART DESCRIBING THE PROCESS OF PETITIONING FOR A 209A PROTECTIVE ORDER (IN DISTRICT COURT*) OR FOR FILING CRIMINAL CHARGES



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Note: Violation of a protective order is a criminal offense for which arrest is mandatory. Violation may result in criminal penalties.

* The 209A process in Probate/Family Court is very similar. Victims should be aware that at the 10 day hearing, in some probate/family courts, mediation with a family service officer may be suggested. It is illegal to force or coerce mediation.

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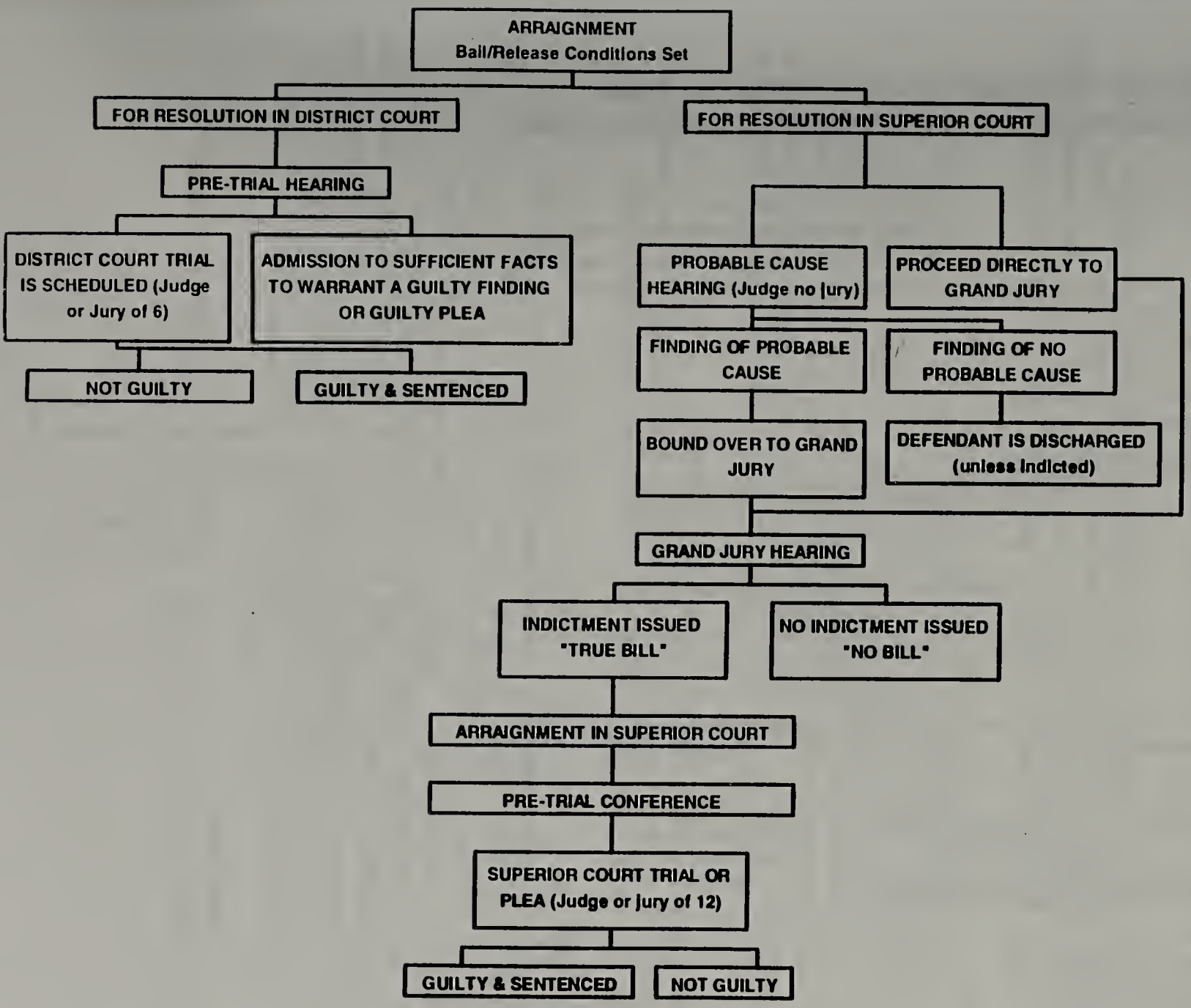

THE CRIMINAL JUSTICE SYSTEM

By law, an illegal action is not only a crime against the person but also a crime against the state. Thus, the case will be referred to as Commonwealth vs.(defendant's name), and the victim is called upon to testify as a witness for the prosecution. As a witness, victims have a very important role in the system of justice– important for themselves, to the court, to the office of the district attorney and to the people of the Commonwealth of Massachusetts. Victim testimony is one way to assure that others will not become harmed by the same offender.

How does a criminal case begin in district court?

There are basically two ways in which a criminal case may be brought before the district court:

- a private citizen requests a complaint from the court, or
- the police seek a complaint from the court.

In each case, a complaint is either issued or denied by the clerk magistrate in district court. If a complaint is issued, then the accused is formally charged (arraigned).

What is an arraignment?

- The judge informs the defendant of the specific charges against him or her;
- A defense attorney is appointed if the accused cannot afford one;
- The district attorney's office assumes responsibility for the case;
- A pre-trial hearing is scheduled, and
- Bail may be set.

What is a protective order?

Chapter 209A of the Massachusetts General Laws allows for an abused person to obtain a civil protective order against his/her abuser if that abuser is a spouse, current or former intimate partner or household member or if the alleged abuser and victim have a child in common. This protective order(commonly called a restraining order) may be issued by the district court, family and probate court or superior court of the district in which the victim lives or to where the victim has fled. It is a civil order which means the person accused of abuse under chapter 209A will have no subsequent criminal record–unless the order is violated. Violation of a restraining order is a criminal offense for which arrest is mandatory. Victims should be aware that protective orders may be violated only after being "***served***" -- given to the accused batterer by the police.

VICTIM AND WITNESS ASSISTANCE BOARD /
Massachusetts Office for Victim Assistance
Designed by Marilee Kenney Hunt, September 1994

NOW LEGAL DEFENSE
AND EDUCATION FUND 99 HUDSON STREET, NEW YORK, NY 10013-2815 (212) 925-6635 FAX (212) 226-1066

September, 1994

THE VIOLENCE AGAINST WOMEN ACT

The Violence Against Women Act of 1994 (VAWA) was enacted as Title IV of the Violent Crime Control and Law Enforcement Act of 1994 and was signed into law by President Clinton on September 13, 1994. VAWA provides for improved prevention and prosecution of violent crimes against women and children, in addition to creating a new legal remedy for certain victims of violent crimes motivated by gender.

Safe Streets for Women (Title IV - Subtitle A)

Chapter 1 - Federal Penalties for Sex Crimes

- Requires the U.S. Sentencing Commission to review and amend its sentencing guidelines for sex offenders. The sentence for repeat offenders can be up to twice the time otherwise authorized.

- Mandates financial restitution to victims by defendants convicted of federal sex crimes, including sexual exploitation and other abuses of children.

- Authorizes $1.5 million for federal victim-witness counselors for the prosecution of sex crimes.

Chapter 2 - Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women

- Authorizes $800 million in grants to states, Indian tribes (4%) and local governments to improve law enforcement, prosecution and victim services in cases of violent crimes against women, including sexual assault and domestic violence. In order to receive the funds, states must pay for rape exams and not charge victims for the cost of filing criminal domestic violence charges. In addition, recipients must recognize the needs of the underserved (i.e. rural, racial or ethnic, and special needs) populations.

Chapter 3 - Safety for Women in Public Transit and Public Parks

- Authorizes $10 million for increased security in public transportation systems.

- Authorizes $10 million to reduce violent crime in national parks, with priority to areas with the highest rates of sexual assaults.

- Authorizes $15 million in aid to states to increase safety in urban parks and recreation areas, with priority to areas with the highest rates of crime.

Chapter 4 - New Evidentiary Rules

- Victims' past sexual behavior or alleged sexual predisposition not admissible in civil or criminal proceeding involving sexual misconduct.

Chapter 5 - Assistance to Victims of Sexual Assault

- Authorizes $205 million for rape prevention and education programs. Twenty-five percent must go to educational programs for middle, junior, and senior high schools.

- Authorizes $2 million to develop training programs to assist personnel in treating released sex offenders.

- Requires the Attorney General to study and evaluate state measures and to propose model legislation providing for the confidentiality of communications between victims of sexual assault or domestic violence and their therapists.

- Authorizes $30 million for treatment, counseling, information and referral for homeless, runaway and street youth at risk of being subjected to sexual abuse.

- Authorizes $50.3 million for victims of child abuse, including money for advocates, judicial training, and televised testimony.

<u>Safe Homes for Women</u> (Title IV - Subtitle B)

Chapter 1 - National Domestic Violence Hotline

- Authorizes $3 million for the creation of a national domestic violence telephone hotline.

Chapter 2 - Interstate Enforcement

- Creates federal criminal penalties for anyone who travels across state lines with the intent to injure their spouse or intimate partner and then intentionally commits a crime of violence causing bodily injury to such person. Penalties are also in effect when the defendant causes the spouse or intimate partner to cross state lines for this purpose.

- Creates federal criminal penalties for anyone who travels across state lines with the intent to violate a protection order and subsequently violates such order. Penalties are also in effect when the defendant causes the spouse or intimate partner to cross state lines for this purpose.

- Provides the victim of a crime under this chapter with an opportunity to be heard in court regarding the danger posed by pretrial release of the defendant.

- Requires financial restitution by the defendant to the victim of an offense under this chapter.

- Requires states to enforce protection orders issued by the courts of another state.

Chapter 3 - Arrest Policies in Domestic Violence Cases

- Authorizes $120 million for grants to states, Indian tribes and local governments to implement mandatory arrest or proarrest programs, improve the tracking of domestic violence cases, increase the coordination among police, prosecutors and the judiciary in cases of domestic violence, to strengthen legal advocacy service programs for victims of domestic violence, and educate judges about domestic violence.

Chapter 4 - Shelter Grants

- Authorizes $325 million for battered women's shelters.

Chapter 5 - Youth Education

- Authorizes $400,000 for the creation of four model programs to teach youth about domestic violence and violence among intimate partners.

Chapter 6 - Community Programs on Domestic Violence

- Authorizes $10 million to non-profit organizations to set up community programs on domestic violence intervention and prevention.

Chapter 7 - Family Violence Prevention and Services Act Amendments

Chapter 8 - Confidentiality for Abused Persons

- Requires the U.S. Postal Service to protect the confidentiality of domestic violence shelters' and abused persons' addresses.

Chapter 9 - Data and Research

- Authorizes a panel to develop a research agenda to increase the understanding and control of violence against women. This money will come from the National Institute of Justice research funds.

- Requires the Attorney General to study and report how states may collect centralized databases on the incidence of sexual and domestic violence within a state ($200,000 is allocated for this study).

- Requires the Centers for Disease Control to study the incidence and cost to health care facilities of injuries resulting from domestic violence and to recommend strategies for reducing both ($100,000 in funding).

Chapter 10 - Rural Domestic Violence and Child Abuse Enforcement

- Authorizes $30 million in grants to rural states and localities and Indian tribes to improve the prosecution of domestic violence and child abuse cases and to increase prevention strategies and victim services.

<u>Civil Rights for Women</u> (Title IV - Subtitle C)

- Establishes a federal civil rights cause of action for victims of gender-motivated crimes of violence.

Equal Justice for Women in the Courts Act (Title IV - Subtitle D)

Chapter 1 - Education and Training for Judges and Court Personnel in State Courts

- Authorizes $600,000 for the State Justice Institute to award grants to develop, test, present and disseminate model programs to be used by states and Indian tribes in training judges and court personnel in the laws of the state on rape, sexual assault, domestic violence and other crimes of violence motivated by the victim's gender.

Chapter 2 - Education and Training for Judges and Court Personnel in Federal Courts

- Encourages the circuit judicial councils to study gender bias in the federal courts and authorizes $500,000 for this purpose.

- Encourages the Federal Judicial Center to include information on gender bias in the courts in its educational programs, and to gather and disseminate reports and materials issued by the gender bias task forces. Authorizes $200,000 for this purpose.

Violence Against Women Act Improvements (Title IV - Subtitle E)

- Includes: pretrial detention in sex offense cases; increased penalties for sex offenses against victims younger than sixteen; payment for testing for sexually transmitted diseases for victims of sexual offenses; limited HIV testing of defendants; preparation of a report on the revision of sentencing guidelines for the intentional transmission of HIV; enforcement of restitution through suspension of federal benefits; study of campus sexual assaults ($200,000); preparation of a report on battered women's syndrome and its use in criminal trials; study and report on the confidentiality of victims' addresses; report on recordkeeping relating to domestic violence.

National Stalker and Domestic Violence Reduction (Title IV - Subtitle F)

- Provides for access to federal crime databases by civil and criminal courts for use in domestic violence and stalking cases.

- Provides for the inclusion of stalking and domestic violence information in crime databases and authorizes $6 million for grants to states and local governments to improve the entering of such data.

Protections for Battered Immigrant Women and Children (Title IV - Subtitle G)

- Permits battered immigrant spouses and children of U.S. citizens and legal residents who have immediate relative status to self-petition for legal resident status and to proceed with their petition.

- Permits battered immigrant spouses and children of U.S. citizens and legal permanent residents, and parents of battered children of U.S. citizens and legal residents, residing in the United States for at least three years to obtain suspension of deportation, if they currently are deportable, if deportation would result in extreme hardship to the alien or the alien's parent or child.

- Encourages Attorney General to consider "any credible evidence" in granting battered spouse benefits. This addresses prior problems in an existing "battered spouse waiver" in the law (INS was requiring expensive professional mental health evidence out of reach for undocumented aliens).

ADDITIONAL PROVISIONS OF THE CRIME ACT AFFECTING WOMEN

In addition to the provisions enacted as the Violence Against Women Act, many provisions affecting women were included in the Violent Crime Control and Law Enforcement Act of 1994.

Local Crime Prevention Block Grant Program (Title III - Subtitle B)

- Authorizes payments to establish supervised visitation centers for children who may be at risk due to domestic violence, sexual, physical or emotional abuse.

Family Unity Demonstration Project (Title III - Subtitle S)

- Authorizes $19.8 million to allow States to carry out demonstration projects that enable eligible, non-violent offenders to live with their children in community correctional facilities.

Death Penalty (Title VI)

- Makes eligible for death penalty a person who causes the death of a person during commission of a sexual abuse offense.

- Makes a prior conviction of sexual assault or child molestation an aggravating factor for a judge or jury considering whether the death penalty is justified.

Firearms - Domestic Violence (Title XI - Subtitle D)

- Prohibits disposal of firearms to, or receipt of, firearms by persons, who having committed domestic abuse, are subject to a restraining order.

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Title XVII - Subtitle A)

- Requires the Attorney General to establish guidelines for State programs that require persons convicted of sexually violent offenses or offenses committed against minor victims to register their current address with a law enforcement agency.

Victims of Crime (Title XXIII - Subtitle A)

- Effective December 1, 1994, the victim of a crime of violence or sexual abuse, if present at the sentencing hearing, may make a statement or present information in relation to the offender's sentence.

Presidential Summit on Violence and National Commission on Crime Prevention and Control (Title XXVII)

- Establishes a 28 member Commission to study, report and make recommendations for preventing and controlling crime and violence in the United States. Requires the Commission to establish a committee or task force to examine violence against women and requires that at least five members of the Commission shall be persons well-qualified to participate in the Commission's examination of the subject of violence against women.

- The Commission shall evaluate the adequacy of and make recommendations regarding State and Federal laws, law enforcement efforts, judicial response and current education, prevention and protective services.

Sentencing Provisions (Title XXVIII)

- Requires the U.S. Sentencing Commission to establish guidelines providing sentencing enhancements for offenses that are determined, beyond a reasonable doubt, to be a crime in which the defendant intentionally selects a victim, or the object of a crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

Protection of Privacy of Information in State Motor Vehicle Records (Title XXX)

- Requires that, except for specific exemptions, personal information obtained by State departments of motor vehicles or their employees or contractors in connection with a motor vehicle record shall not be disclosed or made available to any person or entity. Civil and criminal penalties for violation of this provision were enacted.

First Time Domestic Violence Offender Rehabilitation Program (Title XXXII - Subtitle I)

- A defendant convicted for the first time of a domestic violence crime shall be sentenced to a term of probation if not sentenced to a term of imprisonment.

- A first time domestic violence offender granted parole or supervised released shall be required to attend an offender rehabilitation program that has been approved by the court in consultation with a State Coalition Against Domestic Violence if such a program is readily available within a 50-mile radius of the defendant's legal residence.

Admissibility of Evidence of Similar Crimes in Sex Offense Cases (Title XXXII - Subtitle I)

- Amends the Federal Rules of Evidence to allow, in a prosecution for sexual assault or child molestation and in civil cases concerning sexual assault or child molestation, the introduction of evidence of a defendant's commission of another offense or offenses similar to the one of which he or she is accused.

VICTIM COMPENSATION REFORM

MEMORANDUM

TO: Massachusetts Chiefs of Police

FROM: Scott Harshbarger

RE: Victim Compensation Reform--role of police

DATED: November 23, 1994

As you may know, on April 14, 1994, a new victim compensation law went into effect. As described in the attached Fact Sheet, this law has removed the victim compensation process from the court system and placed it within the administrative responsibility of the Victim Compensation and Assistance Division in my office. The results have been a dramatic streamlining of the process by which crime victims receive financial assistance for crime-related funeral expenses, medical expenses, and lost wages.

Victim Compensation is, for the most part, geared toward crime victims who have cooperated with law enforcement efforts, regardless of whether the offender is ever identified or prosecuted. It is also primarily intended to assist victims who have not provoked or contributed to their injuries through criminal acts. Thus, for example, a person who is assaulted or stabbed during the course of buying or selling drugs may not be eligible for compensation for his medical expenses. Similarly, a batterer who assaults his partner in violation of a restraining order and is then injured by someone who comes to her aid may not be eligible for compensation. In these types of cases, the Division is required to make a careful evaluation of the facts and then, if appropriate, it may reduce or deny a compensation award.

Police play a vital role in the effective administration of victim compensation. As with other victim services, they are a vital link in informing victims of the existence of this program. Particularly in those cases where victims are unlikely to have significant contact with a prosecutor's office, an investigating officer may be the only way a victim will learn of the availability of victim compensation.

Police also play a vital role in the determination of claims for compensation. In order to evaluate a compensation claim, the Division must, as an initial matter, obtain the

police reports in order to determine whether a violent crime has occurred, whether it was reported to police, whether the victim cooperated with the police, and whether or not the victim provoked or contributed to his injuries. Follow-up calls are frequently made by my office to the investigating officers before making a final determination on a claimant's eligibility for victim compensation.

I am very pleased with the working partnership that has already developed between police departments and the Victim Compensation and Assistance Division. Together we have come a long way in improving services and assistance to crime victims. In the months ahead, we hope to forge even stronger links through outreach and training.

If you have any questions about victim compensation, or if you would like to receive brochures and applications for your station, please contact Judith E. Beals, Chief of the Victim Compensation and Assistance Division, tel. (617) 727-2200.

MASSACHUSETTS DEPARTMENT OF THE ATTORNEY GENERAL

DIVISION OF VICTIM COMPENSATION AND ASSISTANCE

Fact Sheet on G.L.c. 258C, Compensation of Victims of Violent Crime

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On April 14, 1994, a new victim compensation law will go into effect. The new law, G.L.c. 258C, significantly reforms the process by which victims of violent crime receive financial compensation for out-of-pocket expenses. Under the old law (G.L.c. 258A), victims were required to go through a long and often adversarial court process to obtain compensation. Under the new law, claims will be filed, investigated and approved for payment by the Division of Victim Compensation and Assistance in the Attorney General's office.

All claims for compensation filed before April 14, 1994 will continue to be adjudicated under the court-based process of G.L.c. 258A. Claims filed on or after April 14, 1994, will be determined in accordance with G.L.c. 258C.

This fact sheet provides a general summary of G.L.c. 258C.

PURPOSE: To provide financial compensation for out-of-pocket expenses to victims of violent crime.

PERSONS ELIGIBLE FOR COMPENSATION:

-Victims of violent crime who suffer physical or psychological injury as a result of a violent crime.

-Dependents and family members of homicide victims.

COMPENSABLE EXPENSES:

-Burial expenses ($4,000 limit).
-Crime-related medical expenses.
-Crime-related mental health counseling expenses.
-Lost wages.
-Homemaker services (must have been sole occupation of victim for one year preceeding crime.
-Loss of support (dependents in homicide cases only).

NON-COMPENSABLE LOSSES:

-Losses covered by health insurance, disability insurance, medicaid, medicare, "free care", workers compensation, unemployment compensation, social security benefits, other public benefits, retirement benefits, restitution, civil suits, or gifts.
-Personal property (money, jewelry, etc.)
-Pain and suffering.
-Lost wages due to court appearances.

ELIGIBILITY REQUIREMENTS:

-Victim must suffer physical or psychological injury or death as a result of a crime.
-Crime must be reported to police or other law enforcement authorities within five days after crime occurred, unless claimant demonstrates good cause for delay.
-Claimant must cooperate with law enforcement authorities in investigation and prosecution of the crime unless claimant demonstrates reasonable excuse for failing to cooperate.
-Claimant must suffer out-of-pocket losses of at least one hundred dollars or two continuous weeks of lost earnings or support. (Does not apply to claimants over the age of sixty, or to victims of rape).
-Claim must be filed within three years of date of crime.

LIMITATIONS:

-Claim may be denied if compensation would unjustly benefit the offender.
-Claim may be denied or reduced if the victim provoked or contributed to the injuries.
-Maximum award to all claimants for one crime is $25,000.
-If claimant is represented by an attorney for purposes of victim compensation claim under the statute, the attorney may receive up to 15% of any compensation awarded, as determine by the Division. Attorney's fees are deducted from the total award to the claimant. Note: this program is designed to assist claimants without the need to hire an attorney.

STEPS IN FILING A CLAIM

1. Obtain an application form from local District Attorney's office or from:

   Massachusetts Attorney General's Office
   Division of Victim Compensation and Assistance
   1 Ashburton Place
   Boston, MA 02108
   (617) 727-2200

2. Complete the application form and return it to the Division. In order to process, application form must be fully completed, and accompanied by supporting verifications, bills, and a release of information. Failure to provide necessary verifications will result in denial of all or part of claim.

3. Claimant must cooperate in investigation of claim. Failure to cooperate may result denial of claim.

STEPS IN PROCESSING CLAIM

1. Upon receipt of completed application, Division will acknowledge receipt of claim.

2. Division will conduct investigation of claim to verify information contained in the application.

3. Upon completion of investigation, Division will notify claimant of the amount of compensation to be paid or denied. If claimant assents, Division will request immediate payment by Treasurer's office.

4. Claimant may request reconsideration of administrative decision (to be filed within fifteen days of administrative decision). Claimant may also seek judicial review of administrative decision in the district court (to be filed within thirty days of administrative decision, or within twenty days of decision on request for reconsideration).

For further information, contact the Division of Victim Compensation and Assistance at (617) 727-2200. Ask to speak to a victim advocate.

OFFICE OF ATTORNEY GENERAL SCOTT HARSHBARGER
VICTIM COMPENSATION AND ASSISTANCE DIVISION
ONE ASHBURTON PLACE, 19th FLOOR
BOSTON, MA 02108-1698
(617) 727-2200
(617) 727-2476 (TTY)

APPLICATION FOR CRIME VICTIM COMPENSATION

Through the Victim Compensation and Assistance Division, Attorney General Scott Harshbarger administers G.L. c. 258C, and 940 CMR 14.00, the Compensation of Victims of Violent Crime Act. This Act enables the Commonwealth to reimburse victims of violent crime for certain out-of-pocket expenses directly attributable to the crime. While no amount of money can compensate for a violent crime, it is the goal of the law, and of the Attorney General, to relieve some of its financial burden on victims and their families.

PLEASE READ THE FOLLOWING INFORMATION AND INSTRUCTIONS BEFORE COMPLETING THIS APPLICATION. IF YOU NEED ANY ASSISTANCE, OR IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE DIVISION AND SPEAK TO A VICTIM ADVOCATE.

SI USTED NECESITA AYUDA, POR FAVOR COMUNIQUESE CON LA OFICINA Y ALGUIEN DE HABLA ESPAÑOLA LE AYUDARÁ.

COMPENSATION MAY BE AWARDED TO:

1. Victims of violent crime who suffer personal or psychological injury.
2. Dependents and family members of homicide victims.
3. Persons who pay for funeral and burial expenses.

COMPENSATION MAY BE AWARDED FOR:

1. Crime related medical expenses.
2. Lost wages.
3. Loss of financial support (for dependents of homicide victims).
4. Funeral and burial expenses.
5. Crime related mental health counseling expenses (for victims, and for family members and dependents of homicide victims).
6. Loss of homemaker services.

COMPENSATION MAY NOT BE AWARDED FOR:

1. Out-of-pocket expenses of less than $100, unless appplicant is over the age of 60, or a victim of rape.
2. Pain and suffering.
3. Stolen or damaged property.
4. Expenses covered by private insurance (such as health insurance, life insurance, and disability insurance); by public funds (such as medicaid, medicare, social security, worker's compensation, veteran's benefits, and welfare), by hospital-based Free Care, or by court-ordered restitution or civil damage awards.
5. Maximum compensation per crime is $25,000.
6. Maximum compensation for funeral/burial expenses is $4,000.

TO QUALIFY FOR COMPENSATION THE FOLLOWING MUST APPLY:

1. Crime must have occurred in Massachusetts.
2. Crime must have been reported to law enforcement authorities within 5 days of the incident, unless there is good cause for delay.
3. Application must be filed within 3 years of the crime.
4. Applicant must cooperate with law enforcement authorities in investigation and prosecution of the crime, unless there is reasonable excuse for failing to cooperate.
5. If the victim provoked or contributed to his injuries through criminal acts, the Division may reduce or deny an award.
6. All other sources of public and private reimbursement must be exhausted. If eligible, applicant must apply for Free Care at treating hospitals. **THE VICTIM COMPENSATION FUND IS A FUND OF LAST RESORT.**

GENERAL INSTRUCTIONS:

1. Victim advocates are available to assist you in completing this application. If you have any questions, call the Victim Compensation and Assistance Division at (617) 727-2200 and speak to a victim advocate.
2. Complete the application form and sign both the "Acknowledgement" and the "Authorization to Release Information" on the last page.
3. Attach copies of all supporting documents and verifications, including bills, insurance statements, and pay stubs. If you do not provide supporting documentation, your application may be denied. If you are unable to obtain supporting documentation, contact the Division.
4. **Send the completed application form and supporting documents to the Office of the Attorney General, Victim Compensation and Assistance Division, One Ashburton Place, Boston, MA 02108-1698.**
5. You do not have to wait until all bills are received in order to file. Bills received after your application is received can be added to your application later.
6. You do not need to be represented by an attorney to apply for compensation. If you are represented by an attorney, an attorney's fee may be deducted from your total award.

SECTION 1 - VICTIM INFORMATION (All applicants must complete this section)

Victim's Name	Female _____	Male _____
Mailing Address		City/State/ZIP
Home Telephone	Work Telephone	
Date of Birth	Age at Time of Incident	Social Security No.

SECTION 2 - APPLICANT INFORMATION (If victim is applicant, write "same")

Applicant's name	Female _____	Male _____
Mailing Address		City/State/ZIP
Home Telephone	Work Telephone	Relationship to Victim
Date of Birth	Social Security No.	
If filing on behalf of minor dependent(s) of homicide victim, relationship to minor dependent(s):		

SECTION 3 - CRIME INFORMATION

Type of Crime:

_____ Assault (non-familial)
_____ Homicide
_____ Sexual assault, adult only
_____ Child sexual assault
_____ Child physical abuse
_____ Domestic violence
_____ Drunk driving (DWI/DUI)
_____ Other

SECTION 3 - CRIME INFORMATION (continued)

Exact Location of Crime (Address)	City/State
Date Crime Occurred	Date crime reported (If NOT reported within 5 days, please explain why)
Name of Police Department	
Name(s) of Offenders(s) (if known)	
Have you been assisted by a victim advocate in the court/district attorney's office? _____ yes _____ no If yes, provide name and telephone no. of advocate:	
Is the criminal case over? _____ yes _____ no If yes, WAS RESTITUTION ORDERED? _____ yes _____ no If yes, amount ordered $_____ Amount paid to date $_____	
Briefly describe the events of the crime in your own words:	
Briefly describe any injuries which resulted:	

FOR SECTIONS 4-8, COMPLETE ONLY THOSE SECTIONS FOR WHICH YOU ARE SEEKING COMPENSATION.

SECTION 4 - MEDICAL EXPENSES (INCLUDING MENTAL HEALTH COUNSELING)

(Include crime related expenses for medical, dental, psychological and rehabilitative services, supplies and medications.)

Name of Provider	Amt. Charged	Ins./Public Benefits Pd.	Applicant Pd.	Balance Due

If additional space is needed, attach a separate sheet.

SECTION 4 - MEDICAL EXPENSES (INCLUDING MENTAL HEALTH COUNSELING) (continued)

Could you be eligible for any of the following:

_____Private Insurance Company _____Hospital-based Free Care _____Worker's Compensation
_____Employers/Union Group _____Medicaid/Medicare _____Other (please specify)
_____Public Benefits (Welfare) _____HMO

Name of Insurance Company/Benefit Group Policy No.

Mailing Address City/State/ZIP Telephone

IF REQUESTING MEDICAL EXPENSES, ATTACH COPIES OF ALL ITEMIZED BILLS, RECEIPTS AND INSURANCE STATEMENTS.

SECTION 5 - LOST WAGES

Victim's Employer Contact Person Telephone

Address City/State/ZIP

Dates absent from work because of crime: from_____ to_____
Hourly rate of compensation $_____ net weekly salary (after taxes) $_____

Did you, or will you, receive any of the following during your absence:

_____ Sick Pay _____ Vacation Pay _____ Worker's Compensation _____ Unemployment Benefits
_____ Welfare _____ Other _____ If none, check here

IF REQUESTING LOST WAGES, ATTACH COPIES OF THE FOLLOWING:

1. Pay stubs or other proof of wages immediately prior to the crime.
2. If self-employed, copies of your tax returns for the year of and year prior to the crime.
3. If absent more than 1 month, a letter from your doctor confirming the dates of disability.

SECTION 6 - LOSS OF HOMEMAKER SERVICES

Was the victim exclusively a homemaker at the time of the crime, and for the year preceding the crime? yes_____ no_____

If yes, are you interested in homemaker services for any dependents of the victim? yes_____ no_____

SECTION 7 - FUNERAL EXPENSES

Name of Funeral Home Telephone

Address City/State/ZIP

SECTION 7 - FUNERAL EXPENSES (continued)

Total amount of Funeral/Burial bill$_____

Have the Funeral Expenses been paid? yes_____ no_____

Were Funeral Expenses paid, in whole or in part, by any of the following:
_____Welfare _____Burial Insurance _____Life Insurance
_____Veterans Insurance _____Relatives _____Other (specify)

IF REQUESTING FUNERAL EXPENSES, ATTACH COPY OF FUNERAL BILL AND DEATH CERTIFICATE.

SECTION 8 - LOSS OF FINANCIAL SUPPORT (available for dependents of homicide victims)

Did victim contribute financial support to any dependents? yes_____ no_____.
If yes, amount contributed per month $_____.

Name(s) of Dependent(s)	Date of Birth	Social Sec. No.	Relationship to victim

Victim's employer | Contact person | Telephone

Address | City/State/ZIP

Could the dependent(s) be eligible for any of the following:
_____Social Security Benefits _____Pension Survivor Benefits _____Life Insurance Benefits
_____Public Benefits (Welfare) _____Other (please specify)

IF REQUESTING COMPENSATION FOR LOSS OF SUPPORT, ATTACH COPIES OF THE FOLLOWING:
1. Victim's tax returns for year of and year prior to the crime.
2. Victim's death certificate.

SECTION 9 - OTHER SOURCES OF FINANCIAL ASSISTANCE

Have you filed, or do you intend to file, a civil lawsuit? yes_____ no_____.
If yes, please state attorney's name/address/telephone:

Is there any life/accident insurance policy in the name of the victim? yes_____ no_____.
If yes, list all beneficiaries who have or may receive proceeds from the policy as a result of the crime, and amounts received or to be received by each beneficiary:

Name of Insurance Company/Policy No._____

As a result of the crime, did you receive payment or reimbursement from any other source not otherwise indicated on this application? yes_____ no_____. If so, please describe:

SECTION 10 - STATISTICAL INFORMATION

The following information is used for statistical purposes only. It is needed to comply with federal regulations.

RACE/ETHNICITY OF VICTIM: _____White _____Black _____Hispanic _____Asian/Pacific Islander
_____Native American _____Other _____I decline to answer this question.

How did you find out about victim compensation? _____Hospital _____Prosecutor _____Poster/Brochure
_____Police _____Victim Service _____Other (please specify)

SECTION 11 - REPRESENTATION BY ATTORNEY

Are you represented by a private attorney in filing this application? yes_____ no_____

Attorney's Name Telephone

Address City/State/ZIP

ACKNOWLEDGEMENT

I understand that a decision on my application will be made by the Victim Compensation and Assistance Division in accordance with the requirements of G.L. c. 258C and 940 CMR 14.00. If I do not agree with the decision, I understand that I have the right to request reconsideration of the decision, and that my request must be made in writing within fifteen days of the date of mailing of the decision of award or denial. I also understand that I have the right to petition for judicial review of the decision, and that such a petition must be filed within thirty days of the date of mailing of the initial decision, or within twenty days from the date of mailing of the decision on my request for reconsideration.

I understand that the Victim Compensation Fund is a fund of last resort. I agree to inform the Division of any funds I may seek from any source for losses for which I have requested compensation, and to promptly reimburse the Commonwealth for any such funds I may receive.

I understand that failure to cooperate with the Division or failure to notify the Division of a change of address may result in the denial of my application for victim compensation.

I certify, under the pains and penalties of perjury, that all information and supporting documentation contained in this application is true and accurate to the best of my knowledge and belief.

_____ _____
Signature of victim/applicant Date

AUTHORIZATION TO RELEASE INFORMATION

I hereby authorize any hospital, medical facility, mental health provider, funeral home, employer, insurer or any other person or agency who has knowledge relative to my victim compensation application to furnish confidential information from my records to the Victim Compensation and Assistance Division of the Massachusetts Attorney General.

I understand that the purpose of this information is to determine whether the requirements of G.L. c. 258C and 940 CMR 14.00 have been satisfied. Only information relevant to this purpose shall be released. I do not authorize the use or release of this information to any person or entity for any other purpose whatsoever. This authorization shall expire upon the final determination of all requirements under G.L. c. 258C and 940 CMR 14.00.

A photocopy or exact reproduction of this signed release shall have the same force and effect as this original.

My signature authorizes release of all such information as specified above.

_____ _____
Signature of victim/applicant Date
(parent/guardian if victim/applicant/dependent is a minor)

Dear Fellow Citizen,

As Attorney General of the Commonwealth, I am deeply committed to assisting victims of violent crime.

One of the achievements I am most proud of is the recent passage of a new victim compensation law which will go into effect on April 14, 1994. Under the old law, victims were required to go through a long and often adversarial court process in order to obtain compensation.

Under the new law claims will be filed, investigated and approved for payment within my office in the Victim Compensation and Assistance Division. Because the Division has streamlined the claims process, victims should see their claims resolved in a more timely and efficient manner.

While no amount of money can compensate for a violent crime, victim compensation can relieve some of its financial burden on victims and their families. It is my hope that the new law will improve the administration of victim compensation and thereby provide greater assistance to victims of crime.

Sincerely,

Scott Harshbarger

If you are a victim of crime, you have certain rights under Massachusetts law, and you are eligible for certain services.

For further information about victim rights and victim services, contact the victim witness program in your local district attorney's office or one of the statewide agencies listed below.

STATEWIDE VICTIM ASSISTANCE PROGRAMS

Office of the Attorney General, Victim Compensation and Assistance Division	(617) 727-2200
Massachusetts Office for Victim Assistance	(617) 727-5200
Massachusetts Parole Board	(617) 727-3271
Criminal History Systems Board	(617) 727-0090

DISTRICT ATTORNEY VICTIM WITNESS PROGRAMS

Berkshire County	(413) 443-3500
Bristol County	(508) 997-0711
Cape and Islands	(508) 362-8103
Essex County	(508) 745-6610
Hampden County	(413) 781-8100
Middlesex County	(617) 494-4604
Norfolk County	(617) 329-5440
Northwestern District	(413) 586-9225
Plymouth County	(508) 584-8120
Suffolk County	(617) 725-8653
Worcester County	(508) 792-0214

VICTIMS OF VIOLENT CRIME COMPENSATION

THE COMMONWEALTH OF MASSACHUSETTS

SCOTT HARSHBARGER ATTORNEY GENERAL

VICTIM COMPENSATION AND ASSISTANCE DIVISION (617) 727-2200

THE MASSACHUSETTS VICTIMS OF VIOLENT CRIME COMPENSATION ACT provides financial compensation for certain out-of-pocket expenses sustained by victims as a direct result of a violent crime. Massachusetts General Law c. 258C.

ELIGIBILITY

WHO MAY APPLY

- Victims of violent crime.
- Dependents and family members of homicide victims.
- Any person who is responsible for the funeral expenses of a homicide victim.

REQUIREMENTS

- The crime must have occurred in Massachusetts.
- The crime must have been reported to police within five days, unless there is good cause for delay.
- You must cooperate with law enforcement officials in the investigation and prosecution of the crime unless there is a reasonable excuse not to cooperate.
- You must apply for compensation within three years of the crime.

EXPENSES COVERED

Expenses must exceed $100 unless you are over 60 or a victim of rape. The maximum award is $25,000.

- Medical and dental expenses (including medications, physical therapy, hearing aids, prosthetics, etc.)
- Mental health counseling.
- Funeral expenses up to $4,000.
- Lost wages.
- Loss of financial support (for dependents of homicide victims).
- Loss of homemaker services.

EXPENSES NOT COVERED

- Anything covered by insurance, restitution, civil damage awards, or public funds such as welfare, medicaid, medicare, social security or hospital - based Free Care.
- Stolen or damaged property.
- Pain and suffering.

APPLICATION PROCESS

- Obtain an application form from a victim witness advocate in your local District Attorney's Office or contact the Victim Compensation and Assistance Division of the Attorney General's Office.
- You do not need an attorney to apply for compensation. If you hire an attorney, the Division can award reasonable attorney's fees not to exceed 15% of the award. The fee is deducted from your total compensation award.
- Forward completed application to:

Victim Compensation and Assistance Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1698
(617) 727-2200

- Investigators will verify your eligibility and expenses. You may be contacted for further information.
- Upon completion of the investigation, the Division will make a decision on your claim based on M.G.L. c. 258C and 940 CMR 14.00.
- If you agree with the decision, the State Treasurer will issue the check(s).
- If you disagree with the decision you may request reconsideration by the Division. You may also seek review of the decision in court.

LEGAL OPINIONS OF THE ATTORNEY GENERAL

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

No. 94/95-1

August 17, 1994

Kathleen M. O'Toole
Secretary of Public Safety
One Ashburton Place, 21st Floor
Boston, MA 02108

Dear Secretary O'Toole:

Your predecessor asked my opinion whether the new mandatory safety belt requirements of chapter 387 of the acts of 1993 apply to operators of and passengers in police and fire vehicles. The request arose because numerous agencies within the Executive Office of Public Safety, including the Registry of Motor Vehicles, the Governor's Highway Safety Bureau, and the Department of State Police, have duties under the new law and in order to perform those duties must know to whom the mandatory safety belt requirements apply. I had previously advised your predecessor that the requirements did not apply to operators of and passengers in police and fire vehicles. In the interests of a uniform statewide interpretation of chapter 387, I now set forth more formally the reasons for that conclusion.

I.

Section 1 of chapter 387 of the acts of 1993 inserts a new section 13A into chapter 90 of the General Laws, as follows:

No person shall operate a private passenger motor vehicle or ride in a private passenger motor vehicle, a vanpool vehicle or truck under eighteen thousand pounds on any way unless such person is wearing a safety belt which is properly adjusted and fastened; provided, however, that this provision shall not apply to:

(a) any child less than twelve years of age who is subject to the provisions of section seven AA;

(b) any person riding in a motor vehicle manufactured before July first, nineteen hundred and sixty six;

(c) any person who is physically unable to use safety belts; provided, however, that such condition is duly certified by a physician who shall state the nature of the handicap, as well as the reasons such restraint is inappropriate; provided, further, that no such physician shall be subject to liability in any civil action for the issuance or for the failure to issue such certificate;

(d) any rural carrier of the United States Postal Service operating a motor vehicle while in the performance of his duties; provided, however, that such rural mail carrier shall be subject to department regulations regarding the use of safety belts or occupant crash protection devices;

(e) anyone involved in the operation of taxis, liveries, tractors, trucks with gross weight of eighteen thousand pounds or over, buses, and passengers of authorized emergency vehicles.

Any person who operates a motor vehicle without a safety belt, and any person sixteen years of age or over who rides as a passenger in a motor vehicle without wearing a safety belt in violation of this

> section, shall be subject to a fine of twenty-five dollars. . . .[1/]

Section 2 of chapter 387 then states, "The provisions of section one of this act shall apply to any municipal, county, or district public employee." It is this language of section 2, in juxtaposition with section 1's insertion into chapter 90 of a safety belt requirement for operators of and passengers in the specified motor vehicles, that gives rise to your question.

II.

The general rule requiring safety belt use that is set forth in the first sentence of the new G.L. c. 90, § 13A, does not apply to all persons or all vehicles; rather, it contains its own set of limitations. It applies only to a person who "operate[s] a private passenger motor vehicle or ride[s] in a private passenger motor vehicle, a vanpool vehicle or truck under eighteen thousand pounds . . . ." Moreover, section 13A goes on to establish five exceptions to the limited general rule of the first sentence. These limitations on and exceptions to the general rule requiring safety belt use are as much a part of section 13A as the general rule itself and must be given equal weight in construing section 13A. Statutory interpretation requires "giving effect to all words in the

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[1/]The section continues with additional enforcement and other provisions not relevant here.

statute but not overemphasizing any." Massachusetts Commission Against Discrimination v. Liberty Mutual Insurance Co., 271 Mass. 186, 190-91 (1976).

Thus, when section 2 of chapter 387 states that "[t]he provisions of section one of this act shall apply to any municipal, county, or district public employee," i.e., that the provisions of G.L. c. 90, § 13A, as inserted by section 1, apply to such employees, section 2 makes both the general rule and the limitations on and exceptions to that rule applicable to such employees. In other words, if municipal, county, or district public employees are not within the limited bounds of the general rule, or are within one of the exceptions, then they are not required by G.L. c. 90, § 13A to wear safety belts. As applied to operators and passengers of police and fire vehicles, this analysis yields the following results.

First, persons operating police and fire vehicles are not operating "private passenger motor vehicles." Therefore, such persons are not within the general rule of section 13A requiring the use of safety belts.

Second, persons who are passengers in police and fire vehicles are not passengers in "private passenger motor vehicles or vanpool vehicles," but they would nevertheless be within the general rule of section 13A requiring the use of safety belts if the police or fire vehicle in question were a "truck under eighteen thousand pounds." Even where that is the case, however, it is necessary to determine whether any of the

exceptions to the general rule of section 13A is applicable. One of those exceptions, exception (e), includes "passengers of authorized emergency vehicles," a category which is not defined in the General Laws but which by the ordinary meaning of the words "authorized emergency vehicles" would encompass police and fire vehicles. Thus, viewing section 13A as a whole, even passengers in police and fire vehicles would not be required to use safety belts.

It may be that section 2 was inserted into chapter 387 for the purpose of requiring all municipal, county, or district public employees to wear safety belts while operating or riding in motor vehicles in the course of their duties. As written, section 2 does not achieve this result as to police and fire vehicles. But this interpretation does not render section 2 superfluous, which would be contrary to accepted principles of statutory interpretation. See, e.g., Todino v. Arbella Mutual Insurance Co., 415 Mass. 298, 302 (1993) (statute should not be construed "in a way which nullifies a particular provision whenever a reasonable alternative exists"). Section 2 makes clear, for example, that municipal, county, and district public employees who have occasion to operate their own private passenger motor vehicles in the course of their duties must (unless within one of the exceptions stated in G.L. c. 90, § 13A) wear safety belts. In other words, section 2 makes clear that although such vehicles may be operated in the course of the performance of public duties, they do not lose their

private character so as to render the safety belt requirement inapplicable.

III.

I recognize that section 13A, after stating the general rule and the exceptions to that rule, goes on to provide (with emphasis added) that "[a]ny person who operates a motor vehicle without a safety belt, and any person sixteen years of age or over who rides as a passenger in a motor vehicle without wearing a safety belt in violation of this section, shall be subject to a fine of twenty-five dollars." Although the second part of the quoted sentence makes clear that a passenger who does not wear a safety belt is subject to a fine only if the failure to wear a safety belt is "in violation of this section," the first part of the quoted sentence includes no such qualifying language, instead subjecting to a fine "any person" who operates "a motor vehicle" without a safety belt. This language, if read in isolation, could be interpreted as subjecting operators of police and fire vehicles to a fine for not wearing safety belts. I do not accept this interpretation, for several reasons.

First, if "any person" who operates "a motor vehicle" without wearing a safety belt is subject to a fine, then the limitations of section 13A's general rule (which, insofar as it applies to vehicle operators, applies only to operators of private passenger motor vehicles), and those of the exceptions

to the general rule that apply to vehicle operators, would be rendered meaningless. Such an interpretation would thus violate the principle that a statute should not be construed so as to render any of its language superfluous. Todino, 415 Mass. at 302.

Second, the interpretation essentially turns on a matter of punctuation. Either the addition or the omission of a comma in the sentence in question would have made clear that the qualifying phrase, "in violation of this section," applied to operators as well as passengers.[2/] And it is a general principle of statutory construction that "matters of punctuation are not necessarily determinative, . . . and that a literal construction which leads to unreasonable results is to

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[2/] The addition of a comma would have made the sentence read, "Any person who operates a motor vehicle without a safety belt, and any person sixteen years of age or over who rides as a passenger in a motor vehicle without wearing a safety belt, in violation of this section, shall be subject to a fine of twenty-five dollars." The omission of a comma would have made the sentence read, "Any person who operates a motor vehicle without a safety belt[] and any person sixteen years of age or over who rides as a passenger in a motor vehicle without wearing a safety belt in violation of this section, shall be subject to a fine of twenty-five dollars." Either version would have made it clearer that persons who operated a motor vehicle without a safety belt were subject to a fine only if they did so "in violation of this section." The mandatory safety belt law enacted in 1985 (and subsequently repealed by referendum) followed the first approach, providing, "Any person who operates a motor vehicle without wearing a safety belt, and any person sixteen years of age or over who rides as a passenger in a motor vehicle without wearing a safety belt, who is not subject to the exceptions provided in this section shall be subject to a fine of fifteen dollars." St. 1985, c. 416, § 3 (inserting former G.L. c. 90, § 7BB).

be avoided when the language to be construed is fairly susceptible to a construction that would lead to a logical and sensible result." Schlesinger v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., 409 Mass. 514, 518-19 (1991) (internal quotations and citations omitted). Because it is more logical and sensible to interpret the twenty-five dollar fine provisions as applying only to those persons subject to section 13A's general rule and not subject to its exceptions, I do not attach controlling weight to the punctuation of the sentence providing for a fine.

Third, although a twenty-five dollar fine is far from a harsh punishment, it does make the statute penal in nature, thus triggering the rule that penal statutes are to be strictly construed against the Commonwealth. E.g., Commonwealth v. Chavis, 415 Mass. 703, 707 (1993). Accordingly, and particularly in light of the other factors discussed immediately above, any ambiguity in the applicability of the twenty-five dollar fine provision should be resolved in favor of those motor vehicle operators who are not within the general rule of section 13A. I thus do not interpret that provision as subjecting operators of police and fire vehicles to a fine for not wearing safety belts.

IV.

I recognize the strong public policy arguments in favor of the use of safety belts. I also recognize that many local

police departments have adopted internal policies requiring the use of safety belts, and nothing in this opinion should be read as calling into question in any way the legality or desirability of such policies. For the foregoing reasons, however, I conclude that the mandatory safety belt requirement of G.L. c. 90, § 13A, as inserted by St. 1993, c. 387, does not apply to operators of and passengers in police and fire vehicles.

Sincerely,

Scott Harshbarger

MEMORANDUM

TO: Secretary Kathleen O'Toole, Executive Office of Public Safety

CC: Paul Doherty, Executive Director, Massachusetts Chiefs of Police Association

FROM: Attorney General Scott Harshbarger

DATE: November 23, 1994

RE: Limitations on Police Officer Liability for Issuance of Temporary Driving Permits

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I enclose an opinion responding to a request by the Registry of Motor Vehicles for my Office's informal views on whether a police officer is protected from personal liability for damages caused by a motorist operating with a temporary driving permit issued by the officer on behalf of the Registrar of Motor Vehicles, as mandated by the recent amendments to the drunk driving laws, St. 1994, c. 25, § 5, effective June 27, 1994.

We have advised the Registrar that, especially given the statutory mandate, the Massachusetts Tort Claims Act likely would protect a police officer from personal liability in tort for damages caused by a driver operating with a temporary driving permit issued by the officer. In our view, the new law does not appear to create any additional personal liability for police officers. Moreover, the new law appears to enhance public protection by preventing the temporary driving permit from becoming effective until twelve (12) hours after its issuance, apparently representing a legislative determination that twelve (12) hours is sufficient time for all or substantially all drunk drivers to become sober. Thus, drunk drivers who are arrested and bailed and/or are released from court prior to the expiration of the twelve (12) hours could not drive home themselves.

We are available to work with your Office and the law enforcement community to answer any further questions about this important new law and to facilitate its implementation.

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

November 23, 1994

Andrew M. Padellaro,
Legal Counsel
Suspensions Department
Registry of Motor Vehicles
1135 Tremont Street
Boston, Massachusetts 02120

Dear Mr. Padellaro:

You have asked our Office's informal views about whether a police officer is protected from personal liability for damages caused by a motorist driving with a temporary driving permit issued by the officer on behalf of the Registrar of Motor Vehicles (the "Registrar"), as mandated by St. 1994, c. 25, § 5, inserting G.L. c. 90, § 24(1)(f)(1) and (2).

Under that section of the new law, effective June 27, 1994, police are directed to take possession of the Massachusetts license of every driver arrested for or charged with operating a motor vehicle while under the influence of intoxicating liquor when such driver either: (1) refuses to submit to a chemical, breath or blood test; or (2) takes such a test and records a blood alcohol content ("BAC") specified by statute (.08 or more if age 21 or older; .02 or more if under age 21). Additionally, the statute provides that under those circumstances, the police shall, on behalf of the Registrar, provide such person with a written notice of intent to suspend such person's driver's license and <u>shall</u> issue to such person a temporary driving permit. St. 1994, c. 25, § 5. The only exceptions to the mandate to issue a temporary permit are if:

> (1) driving privileges of the person were suspended, revoked, or cancelled at the time the person was arrested;

> (2) the person whose license was taken into custody was operating on an invalid license; (3) the person was not entitled to driving privileges at the time of the arrest for any other reason; or (4) the person holds a license or permit granting driving privileges that was issued by another state or jurisdiction.

Id.[1/]

The permit does not become effective until twelve (12) hours after the time of its issuance and remains valid until the fifteenth day after the driver's arrest. Id. The permit grants the same driving privileges as those granted by the person's seized license. Id.

SUMMARY

For the reasons discussed below, we believe that especially given the statutory mandate to issue a temporary driver's permit, the Massachusetts Tort Claims Act ("MTCA"), G.L. c. 258, §§ 1 et seq., likely would protect a police officer from personal liability in tort for damages caused by an operator driving with a temporary permit issued by the officer. In our view, the new law does not appear to create any new potential liability for police officers. Moreover, the new law appears to enhance public protection by preventing the temporary permit from becoming effective until twelve (12) hours after its issuance, presumably representing a legislative determination that twelve (12) hours is sufficent time for all or substantially all drunk drivers to become sober. Thus, drunk drivers who are arrested and bailed and/or are released

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1/ The two "Notices of Suspension/Temporary Driver's License" provided by the Registrar to police officers for issuance to drivers (one to be used in connection with a driver's refusal to submit to a chemical, breath or blood test, and the other to be used if a driver records a BAC specified by statute) both provide:

> Issuance of this document does not provide any driving privileges if your license or right to operate is currently suspended, revoked, or expired, and does not negate any suspension, revocation or expiration that is to take effect during the period of this temporary license. . . .

from court prior to the expiration of the twelve (12) hours could not drive home themselves until the permit became effective. The new law does not appear to alter a police officer's authority to place a drunk driver in protective custody but neither does it appear to create any new liability in that respect.

BACKGROUND ON MASSACHUSETTS TORT CLAIMS ACT

The most likely claim for recovery against a police officer for injuries caused by a driver operating with a temporary permit would be one based in tort. Therefore, to answer your question, it is first necessary to look briefly to the background and requirements of the MTCA, G.L. c. 258, §§ 1 et seq., which governs actions in tort against the Commonwealth and municipalities, arising from the alleged negligence of their employees. Enacted in 1978, the MTCA creates limited liability of public employers (up to $100,000 per plaintiff) for the negligent or wrongful acts or omissions of their employees in the scope of employment. G.L. c. 258, § 2. Additionally, it immunizes employees from personal tort liability in such cases so long as they cooperate reasonably in defending the action. Id. By express provision, the MTCA does not apply to (and, therefore, public employers are not liable for) claims arising from a public employee's performance or failure to perform discretionary acts, commission of intentional torts, and acts or omissions when an employee exercises due care in the execution of statutes and regulations, whether valid or not. Id., §§ 10(b)(c) and (a).

In addition to these express statutory limitations on liability, in 1982, the SJC established the public duty rule which, broadly stated, "protects governmental units from liability unless an injured person seeking recovery can show that the duty breached was a duty owed to the individual himself, and not merely to the public at large." Jean W. v. Commonwealth, 414 Mass. 496, 501 (1993). See also Dinsky v. Framingham, 386 Mass. 801, 802, 810 (1982)(creating the public duty rule in the context of a government inspection); Nickerson v. Commonwealth, 397 Mass. 476 (1986)(applying public duty rule to find no liability for failure to revoke a motor vehicle registration); Appleton v. Hudson, 397 Mass. 812 (1986)(finding no liability based on the public duty rule for failure to provide adequate police protection or to prevent crime). Soon thereafter, the Court invoked the "special relationship" exception to the rule to hold a town liable for its police

officers' failure to arrest a drunk driver they had stopped who caused a fatal accident shortly thereafter, finding a special duty owed to plaintiffs based on statutes requiring control of drunk drivers. Irwin v. Ware, 392 Mass. 271 (1985). See also A. L. v. Commonwealth, 402 Mass. 234 (1988).

Then, in March, 1993, approximately ten years after the creation of the public duty rule, the Court concluded that it had failed to articulate a consistent basis for the public duty rule and exceptions to it. It announced its intention to abolish the rule if the Legislature did not pass additional limitations on liability by the end of the 1993 legislative session. Jean W., 414 Mass. at 499.

In response, the Legislature adopted amendments, effective January 17, 1994, which add to section 10 of the MTCA "what in effect is a statutory public duty rule, providing governmental immunity." Carleton v. Framingham, 418 Mass. 623, 627 (1994). They list six new "exclusions" from the general liability of public employers for negligence under section 2 of the MTCA, including the following:

> (e) any claim based upon the issuance, denial, suspension or revocation or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval order or similar authorization; . . .
>
> (h) any claim . . . if police protection is provided, for failure to provide adequate police protection, prevent the commission of crimes, . . . arrest or detain suspects, or enforce any law . . .[; and]
>
> (j) any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer . . . [with certain exceptions not relevant here].

G.L. c. 258, § 10, as amended by St. 1993, c. 495, § 57.

Based on § 10(e) (and perhaps the original § 10(a) which exempts employers from liability when an employee exercises due care in the execution of a statute), a public employer would appear ordinarily to be immune from liability for claims based on an officer's alleged negligence in issuing a temporary permit pursuant to G.L. c. 90, §§ 24(1)(f)(1) and (2).

Sections 10(h) and (j) would appear ordinarily to immunize a public employer of a police officer from liability for injuries caused by a driver operating with a validly issued temporary permit, including those that might be based on an officer's failure to place a drunk driver in protective custody.

LIMITATIONS ON POLICE OFFICER LIABILITY IN TORT

We believe, for the reasons discussed below, that the Legislature, in passing the 1993 amendments to the MTCA, likely intended for individual police officers, as well as their employers, to be protected from liability under the foregoing circumstances and that a court would likely so hold.[2/] First, at the time of the drafting of the 1993 amendments, in which our Office participated, we wrote a letter to the Senate Ways and Means Committee, in response to concerns raised by the Professional Fire Fighters Association of Massachusetts and the Massachusetts Police Association, stating our belief that the proposed legislation was not intended to, nor did it, have the effect of exposing public employees to personal liability for certain damage claims. Further, we expressed our view that the proposed legislation does not, in any way, diminish the immunity afforded individual officers under G.L. c. 258. A similar opinion has been advanced by a Suffolk University Law Professor, Joseph W. Glannon, who participated as a consultant in the legislative committee discussions leading to the adoption of the 1993 amendments. Joseph W. Glannon, Liability for "Public Duties" under the Tort Claims Act: The Legislature Reconsiders the Public Duty Rule, 18 Mass. L. Rev. 17, 30 (1994).

2/ But see 1979-80 Op. Att'y Gen. No. 6, Rep. A.G., Pub. Doc. No. 12 at 107 (1979), taking the position, prior to judicial construction of G.L. c. 258, § 10(a)-(c), that public employees may be held personally liable for their tortious conduct covered by the exclusions contained in those sections. Subsequent to that opinion, the Appeals Court affirmed a grant of summary judgment in favor of a public employer and its public employees based on the MTCA discretionary function exception, G.L. c. 258, § 10(b), indicating that individual employees are not personally liable under that section. See Cady v. Plymouth-Carver Regional School District, et al., 17 Mass. App. Ct. 211, rev. denied, 391 Mass. 1103 (1983).

Second, where the common law public duty rule applied, it appeared to protect both the public employer and the public employee from liability since the basis for immunity from liability was that the employee owed a duty to the public at large, not to the particular plaintiff. See Dinsky, 386 Mass. at 810. For example, in Appleton v. Hudson, 397 Mass. at 812, claims were brought against the town selectmen and the town administrator, as well as the town, for failure to provide adequate police protection on a public way. The SJC affirmed the trial court's dismissal of claims against the individual defendants based on section 2 of the MTCA. Id. at 815. It also affirmed the dismissal of the claim against the town based on the common law public duty rule. Id. at 815-816. See also Nickerson v. Commonwealth, 397 Mass. 476 (1986). The goal of the 1993 amendments -- to provide governmental immunity by replacing the common law public duty rule with a statutory public duty rule -- would appear to be defeated if a plaintiff could obtain recovery for acts described in the section 10 exclusions simply by naming individual employees as defendants rather than the public employer. Carleton, 418 Mass. at 627. See also Glannon, 18 Mass. L. Rev. at 30.

Third, the statute provides for indemnification of state police and other public employees for judgments based on intentional torts and civil rights violations, but no comparable provisions exist for judgments based on negligent acts or omissions, indicating that the Legislature did not even contemplate individual liability under those circumstances.[3/] See G.L. c. 258, §§ 9, 9A and 13. It would be illogical to assume that the Legislature intended to provide indemnification for judgments based on the more egregious claims of intentional torts and civil rights violations but not for mere negligence on the part of public employees in the scope of their employment.

In sum, especially if, as we believe, the intent of the Legislature in passing the 1993 amendments to the MTCA was to

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3/ In other contexts, where the Legislature has failed to provide indemnification for public employees for judgments based on discretionary acts, the Appeals Court has indicated that public employees, as well as their employers, are not personally liable for acts described under G.L. c. 258, § 10(b). Cady, 17 Mass. App. Ct. at 211. See also footnote 2 herein.

replace the common law public duty rule with a legislative public duty rule, then individual public employees, as well as their public employers, would be protected from liability under the MTCA. We are unaware of any reported Massachusetts cases in which an individual employee has been held liable under the MTCA for negligence in the scope of his or her employment.

If, however, a court were to disagree with our analysis and conclude that the new MTCA section 10 exclusions eliminate public employee immunity for the acts described therein, it would then have to decide based on common law principles whether a police officer is personally liable in tort for issuance of a temporary permit or for injuries caused by a driver operating with such a permit. If a court were to rely on the common law public duty rule cases in making such a determination, the individual employee almost certainly would be immune from liability for the reasons discussed earlier. If, on the other hand, a court were to rely on the pre-MTCA common law cases, we would be unable to make any meaningful generalizations about the application of those principles to the issue of police officer liability since such an analysis would be fact-specific, potentially confusing, and unpredictable, which is in part why the MTCA was passed originally.[4/]

DELAY IN EFFECTIVENESS OF TEMPORARY PERMIT/PROTECTIVE CUSTODY

We make one last comment concerning the related issue of police decisions about whether to keep a drunk driver in

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4/ We note, however, that a claim of negligence based on an officer's compliance with the statutory mandate to issue a permit likely would fail under pre-MTCA common law, so long as the officer had taken reasonable steps to verify that none of the four statutory factors exist that would bar the permit's issuance. Compare Guinan v. Famous Players-Lasky Corp., 267 Mass. 501 (1929)(violation of a statute generally is "evidence of negligence on the part of a violator as to all consequences that the statute . . . was intended to prevent"). See also Davis v. Walent, 16 Mass. App. Ct. 83, 88 (1983). Moreover, even if a police officer erroneously issued a temporary license, that license would not provide driving privileges if the driver's Massachusetts license had been previously suspended, revoked or expired. See footnote 1 herein.

protective custody. The new law appears to offer some additional public protection by delaying the time when the temporary permit becomes effective until twelve (12) hours after its issuance. Thus, a drunk driver who is arrested and bailed and/or is released from court prior to the expiration of the twelve (12) hours could not drive home himself or herself until the permit became effective. Nonetheless, that delay period does not deprive the police of their statutory authority to place a drunk driver in protective custody. See G.L. c. 111B, § 8. As before the enactment of St. 1994, c. 25, § 5, a claim based on negligent exercise of or failure to exercise the authority is still possible and would be analyzed under the foregoing principles. See Carleton, 418 Mass. at 629 (holding that where a police officer failed to place in protective custody a driver whom he knew to be intoxicated and who he had probable cause to believe would imminently drive on the highway, the employer town was not immune from liability pursuant to G.L. c. 258, § 10(b)(discretionary function exception) but was immune from liability under newly enacted G.L. c. 258, § 10(h)(quoted above)). For the reasons we have discussed herein, we believe that a public employer's immunity under the foregoing circumstances should apply also to a police officer, but that issue remains to be decided by a court.

In any event, the mandatory issuance of temporary driving permits pursuant to St. 1994, c. 25, § 5, does not mean that police cannot or should not place in protective custody persons too drunk to drive. At the same time, the new statutory requirements do not create any additional liability for police officers with respect to placing drunk drivers in protective custody.

PROTECTION FROM LIABILITY ON CIVIL RIGHTS CLAIMS

For the sake of completeness, we mention that a plaintiff injured by a temporary permit holder might assert a civil rights claim based on alleged violation of the federal Due Process Clause, for failure to provide adequate police protective services. We believe such a claim almost certainly would fail given the United State Supreme Court's holding that the Due Process Clause imposes no duty on the State to provide members of the general public with adequate protective services. DeShaney v. Winnebago County DSS, 489 U.S. 189 (1989).

Please be advised that the foregoing does not constitute a formal Opinion of the Attorney General, the rendering of which did not appear to be necessary or possible under the above-described circumstances and in order to provide a timely response. Please feel free to contact me if you have any questions or if we can be of any additional assistance.

Very truly yours,

Judy A. Levenson

Judy A. Levenson
Assistant Attorney General
Opinions Coordinator
(617) 727-2200, Ext. 2087

JAL/pob

cc: G. Murphy, Asst. Secretary, EOPS
J. McDavitt, Chief Deputy Registrar
P. Doherty, Executive Director, Massachusetts Chiefs of Police Association
Maj. P. Greaney, Massachusetts State Police Traffic Operations
H. Osgood, Director of Driver Control
Nancy Burns, Director, Office of Alcohol Testing, DSP

WPPLJA/688

ATTORNEY GENERAL'S ELDERLY PROTECTION PROJECT INITIATIVE

PROJECT INITIATIVES AT A GLANCE

Initiatives	Objectives	Collaborating Agencies
1. IN-SERVICE TRAINING	• Train 7,000 officers • Train 27 police instructors • Provide quality lesson plan, handout package and visual aids • Quality control through site visits and critiques	• MCJTC (Massachusetts Criminal Justice Training Council) - 6 regional academies and advisory committees • State Police - 3 regional academies
2. RECRUIT TRAINING	• Train 300 recruits • Provide quality lesson plan, handout package and visual aids	• MCJTC • State Police • Worcester Police (have own Recruit Academy)
3. ADVANCED TRAINING	• Train 100 officers during 2 two-day regional trainings • Continued national recognition and distribution of training materials	• EOEA (Executive Office of Elder Affairs) • 27 local protective service agencies • Local police departments • AARP • Mass. Alzheimer's Assoc. • Registry of Motor Vehicles
4. PROSECUTOR - ADVOCATE TRAINING	• Train prosecutors and advocates from all 11 D.A.'s offices and protective service workers during 6 regional trainings of 4 hours each	• EOEA • 27 local protective service agencies • 11 local District Attorneys' Offices
5. CREATING AN ALZHEIMER'S VIDEOTAPE FOR ROLL CALL	• 5,000 officers • Produce 5 to 7 minute quality videotape • 5,000 booklets to go with the video • National distribution of the training product	• Mass. Alzheimer's Assoc. • Boston Elder Affairs Commission • AARP • Lifecycle Productions, Inc. • Local police departments (for actors and equipment)
6. LAW ENFORCEMENT TRAINING IN THE USE OF ELDER VOLUNTEERS	• Video seen by 100 officers • 3 regional trainings of 4 hours each • Volunteer programs implemented in Massachusetts	• AARP • State Police • Local police departments • Mass. Chiefs of Police Assoc. • MCJTC
7. FINANCIAL INSTITUTION TRAINING	• Training 1,000 bank employees • 10 trainings of 4 hours each • Reduce elder financial exploitation at the source by prevention	• EOEA • Division of Banks • Executive Office of Consumer Affairs • A.G.'s Public Protection Bureau • Banks in Massachusetts

MEMORANDUM

TO: **CHIEFS OF POLICE**

FROM: **ATTORNEY GENERAL SCOTT HARSHBARGER**

RE: **POLICE TRAINING IN ELDER ISSUES**

DATE: **NOVEMBER 25, 1994**

Dear Chiefs,

Welcome to the conference on issues of concern to you and your departments. One of the emerging areas in law enforcement is service to the elderly. The Elderly Protection Project has and will continue to serve as a resource for police departments. I have been very pleased with the response of departments and training academies over the past year to our programs. And I hope to reach even more officers in the future.

We thought you might be interested in our responses to the major questions that I and Project Director John Scheft receive from law enforcement executives throughout the Commonwealth. And, please, do not hesitate to call John Scheft [(617) 727-2200, extension 2888] for more information or for a copy of the training manual.

We have so many training demands -- is elder issues instruction really a police priority?

Yes, for two major reasons:

* ***Police want and need guidance in this emerging area.*** A nationwide study conducted by the Police Executives Research Forum (PERF) indicates that law enforcement officers are unclear about their role in responding to all forms of domestic elder abuse, are largely unaware of legislative reporting requirements, and generally, are not trained in the detection of different forms of abuse.[1] In a follow-up study by PERF, police chiefs expressed a

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[1] M. Plotkin, *A Time for Dignity: Police and Domestic Abuse of the Elderly* (Washington, D.C.: AARP, 1988). Of the 200 agencies surveyed, 175 responded. The results of the survey indicate that: (1) 82% of the respondents were unable to identify how many cases of elder abuse came to their attention in the previous year; (2) 31% were unaware of specific statutes governing the law enforcement response; (3) only 28% had written policies related to domestic abuse of the elderly; (4) 80% of all surveyed departments provided no training on elder abuse.

strong interest in elder abuse training materials.

A number of Massachusetts police commanders have echoed this desire for more training on elder issues, as have the vast majority of officers I have taught this year. These law enforcers understand the critical need for increased attention to elder issues in view of the dramatic increase in the elderly population which is projected to continue well into the next century. Police officers and commanders recognize that this population will have accompanying demands for service requiring officers to exercise particular care and sensitivity -- especially in the domestic violence context -- when interacting with older persons. Service to the elderly is an important component of any community policing program.

* ***Training makes a significant difference in job performance and community acceptance***. It is more than a theory that improved communication skills, coupled with a greater understanding of reporting laws, protective services' capabilities, and investigative techniques, enable officers to handle elder policing problems in a way that engenders community support.

A recent study[2] demonstrated that officers with specialized training on elderly victimization consistently receive favorable ratings from the older citizens they serve. In contrast, officers lacking some specialized training receive generally poor ratings from elderly citizens, and these negative perceptions cause elder citizens to have a negative view about the overall effectiveness of the police.

Equally as compelling, specially trained officers solve twice as many crimes against the elderly as those officers lacking training.[3] Thus, training can be the catalyst to better police/community interaction *and* more effective crime fighting.

Can you summarize the topics that have been covered during the advanced training sessions and in the advanced law enforcement manual?

Sure, the following topics receive attention:

* ***Demographics***: By 2020, almost one in five in the United States will be 65 and over, about the same percentage of older people as in Florida today. The implications are becoming more apparent. As the demographics of this

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[2] Zevitz and Gurnack, "Factors Related to Elderly Crime Victims' Satisfaction with Police Service: The Impact of Milwaukee's 'Gray Squad'" *The Gerontologist*, Vol. 31, No. 1 (1991).

[3] *Id.* at page 98.

country move us toward an older society, contacts between law enforcement and older citizens are increasing, especially given the shift towards community policing. Law enforcement and older citizens have mutual interests: the police depend upon citizens to report crime and testify, and to provide support for political and funding initiatives that benefit law enforcement; older citizens consistently reveal that they rank crime and their fear of victimization among their three greatest concerns, so they depend upon the police for protection in a variety of ways.

* ***Myths and Facts of Aging***: Provides information that accurately portrays the capabilities of older people, and looks to break down certain stereotypes that people bring to their interactions with the elderly. Chronological age and functional age are not the same, and aging and disease -- contrary to popular perception -- are not synonymous. About 80% of those over 65 are fully capable of carrying on normal life activities; only 5% to 10% suffer from Alzheimer's disease; 81% live with their families and are homeowners. This "real" picture of the elderly serves as the basis for greater understanding, which leads to more effective communication.

* ***Fear, Victimization and Vulnerability***: Discusses the sources of fear and vulnerability that characterize the elderly's perceptions of and/or experience with crime. This section has important implications for police officers because it shows that the fears that the elderly express (that they will be raped and beaten) are not consistent with the *actual* ways (domestic violence and financial frauds) that they are typically victimized. Crime prevention which, under a community policing orientation, is most often seen as a department-wide responsibility, can best be accomplished by communicating this inconsistency and then focusing on the "real" crime problem. Furthermore, this section of the training offers additional insight on how to deal with the elderly victim/witness.

* ***Communicating with the Elderly***: Informs participants how to deal with the hearing and seeing problems experienced by some older people. Through the use of videotape scenarios, participants will examine common interaction failures and then observe ways to be more sensitive to "clues," thus engaging in "service-oriented" communication.

* ***The Elder Abuse Reporting Law and Working with Protective Services***: Covers the fundamental relationship of law enforcement and local protective service workers -- mandated reporting requirements for abuse, fraud and neglect; oral and written reporting procedures; services and investigation procedures undertaken by protective agencies. There will also be a discussion of the limits of protective services and how the self-determination rights of the elderly are upheld, sometimes in circumstances that law enforcement find difficult to accept.

* ***Abuse Investigation***: Offers a checklist approach to investigators embarking on an elder abuse investigation. Emphasis is placed on report writing skills and photographs of the scene and any injuries. Much of the material has been developed from techniques employed in domestic violence cases. In fact, more effective report writing and on-scene photography is applied with such regularity by the San Diego Police during domestic violence calls that the City Attorney is able to prosecute 70% of the arrested abusers without the victims' cooperation. Clearly, organized approaches to investigation yield positive outcomes in court.

* ***Financial Exploitation***: Examines the three categories of financial exploitation and the role of the police officer in preventing and investigating these kinds of crime. Financial exploitation is perpetrated by: (1) *Caretakers*, who are typically dependents or "friends" of their elderly victims, which lets them use their personal relationships to gain access to funds; (2) *Fiduciaries*, who are professionals (such as lawyers, accountants or financial advisors) who use their position of trust to divert or misuse elders' assets for their own purposes; and (3) *Scam Artists*, who are strangers to the elderly victims they swindle through the use of various fraud schemes conducted in person, by mail, and over the phone. Beyond familiarity with the various categories, participants will learn important investigative steps in response to these abuses as well as community approaches they might take to educate the public.

* ***Elder Driving Issues***: Discusses how the officer can effectively and sensitively deal with the impaired elder who presents a danger to the public behind the wheel. This section introduces officers to the proper way to have an elder re-tested for driving competency by the Registry of Motor Vehicles or, if necessary, to have a motorist's license revoked. It also introduces officers to *AARP's 55 Alive*, a program designed to educate elders in better driving skills.

What is the track record of the Elderly Protection Project that would encourage us to utilize its training materials and approach?

The Project notes the following accomplishments:

* ***Conducted 16 regional, two-day advanced trainings involving 470 officers, 63 protective service workers, and 38 other professionals***. This series of trainings has been the centerpiece of the Project. The 16 trainings involved officers from over 200 police departments and protective workers from all 27 local elder services agencies in Massachusetts.

* ***Created 183 page comprehensive training manual.*** This may be the Project's most enduring accomplishment. The manual has received excellent reviews by course participants. In addition to providing a manual to each course participant, the Project has distributed another 200 copies to police departments and protective service workers and other law enforcement and human service agencies in the United States.[4]

* ***Received very strong evaluations from course participants.*** Evaluations reveal approximately 75% of the participants gave this course the highest possible rating for content, delivery and quality of training materials. 75% of the participants strongly believe that this training "increased [their] sensitivity to older people." Beyond statistical information, both officers and protective service workers commented that the trainings helped to strengthen their working relationship which, in the future, should cause them to investigate and collaborate on cases in a different, more effective way.

* ***Conducted 12 recruit training programs for 829 recruits.*** These programs, of varying lengths, were well received by the cadets.

* ***National recognition.*** The Project was recently recognized by the Bureau of Justice Assistance, United States Department of Justice, as a national model for police training on a fundamental community issue. In May, I was invited to speak on behalf of Attorney General Harshbarger at national conferences in Seattle, Washington and Clearwater, Florida. This week, the National Association of District Attorneys requested the opportunity to study the Project for possible replication in other prosecutors' offices.

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[4] For example, agencies receiving the manual include the AARP Criminal Justice Section, the National Sheriff's Association, the United States Postal Inspection Service, New Jersey Social Services, the South Carolina Law Enforcement Training Center, the State Attorney of Utah.

SAFETY IN SCHOOLS

RECENT AMENDMENTS RELATING TO SAFETY IN SCHOOLS

COMMUNITY BASED JUVENILE JUSTICE PROGRAMS

SECTION 212. The district attorneys in the Suffolk, Northern, Eastern, Western, Plymouth, Cape and Islands, and Berkshire districts are hereby authorized and directed to establish a community based juvenile justice program in order to coordinate efforts of the criminal justice system in addressing juvenile violence, to be implemented by September first, nineteen hundred and ninety-four, through cooperation with the schools and local law enforcement representatives, probation and court representatives, and where appropriate the department of social services, department of youth services, and department of mental health. The district attorney's community based juvenile justice program shall identify cases in which the juvenile offender is among those most likely to pose a threat to their community. The program shall treat the identified cases as priority prosecution cases and impose individualized sanctions designed to deter the offender from further criminal or delinquent conduct. The office of the District Attorney shall work with the schools and community representatives on development of violence prevention and intervention programs, identification, protocol and curricula.

The office of the district attorney shall conduct weekly working sessions focusing on specific events and particular individuals whose conduct poses a threat to schools, neighborhoods and communities. The office shall be responsible for creating, managing and updating a priority prosecution list of individuals identified as the community's most serious violent youths and repeat offenders and shall update said list as events may happen and the individual is moved through the criminal justice system. The office of the district attorney shall assign prosecutors to the community based juvenile justice program who will treat the identified cases as their priority cases and shall work with the school, courts and other agencies to deter future violent, criminal or delinquent conduct. The office of the district attorney shall further be responsible for managing the lists, compiling and publishing statistics, coordinating meetings with the assistant district attorneys assigned to the program and local law enforcement agencies, schools, probation and court representatives, and where appropriate the department of social services, department of youth services, and department of mental health.

The district attorneys directed herein to implement said program shall form a community based juvenile justice program task force for the purpose of sharing information on the practices and developments of violence prevention and prosecution in their particular programs. Each district attorney so directed shall submit a status report on the implementation and progress of their community based juvenile justice program, including statistics and findings, to the house and senate ways and means committees by March first, nineteen hundred and ninety-five.

§ 37H. Policies relative to conduct of teachers or students; student handbooks

The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of other student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal.

(b) Any student who assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion from the school or school district by the principal.

(c) Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing; provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal.

After said hearing, a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b); provided, however, that any principal who decides that said student should be suspended shall state in writing to the school committee his reasons for choosing the suspension instead of the expulsion as the most appropriate remedy. In this statement, the principal shall represent that, in his opinion, the continued presence of this student in the school will not pose a threat to the safety, security and welfare of the other students and staff in the school.

(d) Any student who has been expelled from a school district pursuant to these provisions shall have the right to appeal to the superintendent. The expelled student shall have ten days from the date of the expulsion in which to notify the superintendent of his appeal. The student has the right to counsel at a hearing before the superintendent. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of this section.

(e) When a student is expelled under the provisions of this section, no school or school district within the commonwealth shall be required to admit such student or to provide educational services to said student. If said student does apply for admission to another school or school district, the superintendent of the school district to which the application is made may request and shall receive from the superintendent of the school expelling said student a written statement of the reasons for said expulsion.

§ 37H½. Felony complaint or conviction of student; suspension; expulsion; right to appeal

Notwithstanding the provisions of section eighty-four and sections sixteen and seventeen of chapter seventy-six:

(1) Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and the reasons for such suspension prior to such suspension taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such suspension; provided, however, that such suspension shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the suspension to the superintendent. The student shall notify the superintendent in writing of his request for an appeal no later than five calendar days following the effective date of the suspension. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the student's request for an appeal. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the suspension.

(2) Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and reasons for such expulsion prior to such expulsion taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such expulsion; provided, however, that the expulsion shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the expulsion to the superintendent. The student shall notify the superintendent, in writing, of his request for an appeal no later than five calender days following the effective date of the expulsion. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the expulsion. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calender days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the expulsion.

Upon expulsion of such student, no school or school district shall be required to provide educational services to such student.

Added by St.1993, c. 380, § 2.

REPORTS OF DANGEROUS WEAPONS IN SCHOOLS

Mass. General Laws Chapter 71, Section 37L

The school committee of each city, town or regional school district shall inform teachers, administrators, and other professional staff of reporting requirements for child abuse and neglect as specified in sections fifty-one A to fifty-one F, inclusive, of chapter one hundred and nineteen.

In addition, any school department personnel shall report in writing to their immediate supervisor an incident involving a student's possession or use of a dangerous weapon on school premises at any time.

Supervisors who receive such a weapon report shall file it with the superintendent of said school, who shall file copies of said weapon report with the local chief of police, the department of social services, the office of student services or its equivalent in any school district, and the local school committee. Said superintendent, police chief, and representative from the department of social services, together with a representative from the office of student services or its equivalent, shall arrange an assessment of the student involved in said weapon report. Said student shall be referred to a counseling program; provided, however, that said counseling shall be in accordance with acceptable standards as set forth by the board of education. Upon completion of a counseling session, a follow-up assessment shall be made of said student by those involved in the initial assessment.

A student transferring into a local system must provide the new school system with a complete school record of the entering student. Said record shall include, but not be limited to, any incidents involving suspension or violation of criminal acts or any incident reports in which such student was charged with any suspended act.

Mass. General Laws Chapter 71, Section 37L, as amended by Section 37 of Chapter 71 of the Acts of 1993 (the Education Reform Act).

FEDERAL **Gun-Free Requirements**

"(a) This section may be cited as the 'Gun-Free Schools Act of 1994.'

(b) Requirements. -
(1) In General - Except as provided in paragraph (3), each State receiving Federal funds under this Act shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.

(2) Construction - Nothing in this title shall be construed to prevent a State from allowing a local educational agency that has expelled a student from such a student's regular school setting from providing educational services to such student in an alternative setting.

(3) Special Rule - (A) Any State that has a law in effect prior to the date of enactment of the Improving America's Schools Act of 1994 which is in conflict with the not less than one year expulsion requirement described in paragraph (1) shall have the period of time described in subparagraph (B) to comply with such requirement.

(B) The period of time shall be the period beginning on the date of enactment of the Improving Amerce's Schools Act and ending one year after such date.

(4) Definition - For the purpose of this section, the term "weapon" means a firearm as such term is defined in section 921 of title 18, United States Code.

(c) Special Rule - The provisions of this section shall be construed in a manner consistent with the Individuals with Disabilities Education Act.

(d) Report to State - Each local educational agency requesting assistance from the State educational agency that is to be provided from funds made available to the State under this Act shall provide to the State, in the application requesting assistance -

(1) an assurance that such local educational agency is in compliance with the State law required by subsection (b); and
(2) a description of the circumstances surrounding any expulsions imposed under the State law required by subsection (b), including -

(A) the name of the school concerned;
(B) the number of students expelled from such schools; and
(C) the type of weapons concerned.

(e) Reporting - Each State Shall report the information described in subsection (c) to the Secretary on an annual basis.

(f) Report to Congress - Two years after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall report to Congress if any State is not in compliance with the requirements of this title."

(Sec. 14601)

Criminal Justice Referral

"(a) In General - No funds shall be made available under this Act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to school served by such agency."

(b) Definitions. - For the purpose of this section, the terms "firearm" and "school" have the same meaning given to such terms y section 921(a) of title 18, United States Code."

(Sec. 14602)

OUTLINE
SCHOOL/LAW ENFORCEMENT INFORMATION SHARING ISSUES

I. Introduction

A. Scope of Problem

1. Increase in violence in and around schools

2. Recognition that cooperation is effective form of prevention/intervention

3. Recent statutory changes which require or increase the need for cooperation and communication. (G.L. c. 71, secs. 37H1/2, 37L, c. 212, federal Gun-Free Schools Act)

4. Recognition of complexity of laws and confusion in this area

B. Purpose of manual

1. Description of work of information sharing task force

2. Desire to provide guidance to schools/courts/law enforcement agencies to encourage appropriate and permissable information sharing.

II. Sharing information on juveniles

1. School records

a. Student record regulation information

b. School personnel observations and reports of incidents

2. Police records

a. description of records maintained by police (arrest records, incident reports, intelligence information)

b. discussion of statutes and/or regulations applicable to such information

c. departmental policies regarding access to information

3. District Attorney case information

4. Juvenile court records

5. DYS records

III. Sharing information on youthful offenders(ages 17-22)

1. School records

2. Police records

3. Court records

4. District Attorney case information

5. Post-disposition records

IV. Glossary of terms used

V. Appendices

1. Sample Memorandum of Understanding

2. Proposed order in juvenile cases re: release of case information to schools

VIOLENCE IN URBAN AMERICA: MOBILIZING A RESPONSE

National Academy Press, 1994

UNDERSTANDING AND PREVENTING VIOLENCE

Albert J. Reiss, Jr.

Those of you who have read the three panel reports to be presented this morning know that each includes many specific recommendations. Rather than report the recommendations of our Panel on the Understanding and Control of Violent Behavior, I shall begin by telling you about the panel's overall approach to the problem of understanding, controlling, and preventing violence and then point to some of our recommendations that I think might contribute to our discussions today.

Perhaps the first thing worth noting is that the panel concluded that it could not cover all violent harms; it chose to focus on interpersonal violent behaviors, especially those that are constructed as crimes. It therefore did not deal with the causes and consequences of violence considered by previous national commissions. Nor did it deal with suicide or other forms of self-harming by violent means.

The second thing worth noting is that we did not talk generally of violent crimes or violent behaviors. Rather, just as one doesn't spend a great deal of time talking about disease, but rather of a specific disease—even of a specific type of cancer—if one is seeking to prevent or treat it, we recognized the importance of trying to understand what leads to specific types of crimes that involve violent behavior or threats of violence, such as armed robbery or spouse assault or the different types of homicide, each with its own causes and means of prevention. Indeed, although it is important to try and understand what causes different types of violent behaviors and their consequences, an understanding of causes is not essential either to preventing their occurrence or to meliorating their consequences. We can determine what places a given population at risk as a prerequisite to prevention and control and how different interventions meliorate the consequences of violence.

The third thing that guided our deliberations was a recognition of the fragmented state of knowledge and understanding about violent behaviors because the scientific community fragments itself into disciplines, each pro-

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Albert J. Reiss, Jr., served as chair of the Panel on the Understanding and Control of Violent Behavior, which produced the report summarized here (Albert J. Reiss, Jr., and Jeffrey A. Roth, editors; Washington, D.C.: National Academy Press, 1993). The generous assistance of Jeffrey A. Roth, staff director for the panel, is gratefully acknowledged.

viding only limited understanding. Some focus on the physiology and neurobiology of aggression or violence; others focus on individual propensities or psychological dispositions to violence; still others try to understand why some communities are more violent than others. We recommended that a reasonable policy for funding research on understanding violent behaviors would give priority to research proposals that involved at least two of these levels—for example, studying both community and individual factors to determine the relative contribution of each to given violent behaviors.

The fourth thing that guided our final deliberations was that we could find relatively few examples in which research or evaluation provided sufficient evidence to conclude that a particular violence prevention or reduction program should be recommended for implementation. In fact, we concluded that only a relatively small number were particularly promising enough to warrant continuing implementation and testing. There are reasons that is so, and among them is the fact that most evaluations are not planned as part of the introduction of a program to prevent violence or reduce its consequences. In other cases the evaluation design was too weak to reach a conclusion as to the program's effects on a type of violent behavior. A good example is community policing. Many police departments introduce what they regard as community policing, but few provide for evaluating its effectiveness. Accordingly, we recommended partnerships between the research community and the agencies that plan and implement violence prevention or reduction programs and that the evaluation should be designed and ready for implementation before an intervention begins. Continuing evaluation of a particular type of intervention can teach us what may be working and what to change.

The panel's report offers a blueprint for preventing and controlling violence while building knowledge about its causes. All of you are familiar with the statistical portrait of violence in America, so I shall not repeat those facts. Rather, I shall now draw on only a few of the panel's conclusions and recommendations that may be germane to our discussion here.

To begin, it is commonly assumed that punishment strategies are a deterrent. So why not just build more prisons and send persons who commit a violent crime to prison with longer sentences? That experiment has been tried, and research for the panel led to the conclusion that it is a very limited strategy for preventing violent behavior. While average prison time per violent crime nearly tripled between 1975 and 1989, about 2.9 million serious violent crimes occurred in 1989—almost exactly the same as in 1975. Longer sentences no doubt prevented some violent crimes. But if it prevented many, they must have been replaced by others.

Jails and prisons aren't useless *responses* after violence occurs, but experience with sentencing persons who commit violent acts shows they aren't enough. To substantially reduce violence in America, it must be

prevented before it happens, by fixing what causes it or by reducing the risks of its occurrence. When we cannot prevent a violent act, we can determine how best to intervene so that its consequences are less harmful to victims, their families, and their communities.

Prevention may seem overwhelming because there are many different causes and types of violent behaviors—in communities where violence happens, in early childhood development, in neurological processes that underlie violent acts, and in situations that present hazards for violence. That very complexity, however, presents opportunities because every cause and every risk factor suggest a promising point for prevention.

We can reduce violence the same way medical scientists extend life expectancy—by attacking one type of disease or one cause of death at a time. We should abandon the traditional focus on preventing crime and violence and focus rather on the most promising ways that we can prevent different types of violence—just as we focus on preventing different types of disease. Just as there are many different types of cancer that have different preventive strategies, there are many different types of homicide and hence no single way to prevent homicide. The causes and means of preventing domestic violence are not identical with those for assaults in bars, just as the causes of skin cancer (exposure to ultraviolent rays) are not the same as the causes of lung cancer (smoking).

At the community level, "reducing poverty" is too general to serve as a launching point for violence prevention or reducing its consequences. Yet research suggests some promising and achievable objectives: reversing housing policies that geographically concentrate poor, one-parent families with teenage sons; supporting social networks and parenting whose values discourage violence; improving police-community cooperation; and providing legitimate economic alternatives to violent illegal drug and gun markets.

During childhood development, promising points of intervention and prevention include helping parents to be nonviolent role models, provide consistent discipline, limit children's violent entertainment, and teach them nonviolent ways to meet their needs. Regular postpartum home visits by public health nurses and, later, Head Start preschool enrichment, seem to help. Restricting the availability of *violent* sexual pornography may help reduce sexual violence.

The panel's report provoked concern over intrusions into the lives of minorities, epileptics, the mentally disabled, or children "marked" by some genetic pattern by simply opening the possibility of investigating neurological processes in causing violence. The panel found no scientific support for such intrusions, but concluded that reducing women's substance abuse during pregnancy, children's exposure to lead, and childhood head injuries would prevent some violence.

At best, these are long-range approaches to preventing violence. Faster

results require eliminating hazardous situations for violence. That strategy points to three major commodities linked to aggression and violent behaviors: alcohol, illegal drugs, and guns. It also points to intervention into places and situations in which these commodities are more likely to precipitate violent behavior.

To prevent alcohol-related violence, police and proprietors can cooperate to diagnose and remove the risks in "hot spots"—places, including bars, that produce far more than their share of violence-related police calls. Some alcohol abuse prevention programs are promising. Laws, alcohol taxes, and social pressure to cut underage drinking have reduced teenagers' automobile accident rates and may reduce their excessive share of interpersonal violence.

Unlike alcohol, illegal drugs produce violence primarily through distribution, not use. Strategies to reduce drug demand that fuels violent markets include drug abuse prevention, drug treatment, and coordination of in-prison therapeutic communities with postrelease treatment. Methadone equivalents for cocaine and other drugs that could make drug treatment more effective show promising development.

Debates about firearm violence usually center on new laws, some of which have reduced gun murders temporarily. But because most guns used in crime are obtained illegally, the panel stressed finding better ways to enforce existing gun laws—especially disrupting illegal gun markets and preventing juveniles from buying guns. Such police tactics as undercover buys and wholesale-level sting operations may be useful. But as we should have learned from the "drug wars," making them work requires community support, evaluation, and progressive development.

Moving from promising points for intervention to effective violence prevention will require cooperation by organizations that don't always work well together: police; other criminal justice agencies; community-based organizations; school, public health, and social service administrators; and evaluation researchers. Ties among them must develop locally and around specific prevention efforts, but the federal government can encourage that development.

Finally, the panel concluded that federal antiviolence assistance should be reoriented to increase incentives for interagency cooperation and for long-term development and testing programs. Federal investments in research to understand violence will continue to pay off with new understanding of means for preventing it.

UNDERSTANDING CHILD ABUSE AND NEGLECT

Cathy Spatz Widom

Thank you. It's a pleasure to be here.

You may say to yourself, "I wonder why we have to hear about this report on understanding child abuse and neglect, given that the focus of this conference is urban violence?" Well, one thing is that child abuse *is* a form of family violence. So we should be concerned about that in itself. But what I will say in the few minutes I have is designed to tell you why understanding and preventing child abuse and neglect is important for urban violence, particularly so that we may be able to reduce urban violence in the future.

I was particularly excited and encouraged when I was at a community policing meeting several weeks ago and the keynote luncheon speaker was Attorney General Janet Reno. It was as if she had been in my brain the week before as I was making notes for my talk to those same community policing people about why and what they should do in cases of child abuse and neglect. And it's very exciting for me to hear an Attorney General of the United States talking about prevention, rather than simply law enforcement.

Al Reiss said at the start of his remarks that he was just going to just pick a fraction of things in his panel's report to tell you about. I have to say at the beginning, that in contrast to some other areas of knowledge that we have in the social sciences, the scientific study of child abuse and neglect is still in its early stages of development. And we desperately need more high-quality research to build a firm knowledge base.

The panel adopted an ecological, developmental perspective, which means that we wanted to look at the child in the context of the family and of society. This perspective reflects the understanding that development is a process involving transactions between a growing child and a social environment, and in that environment development takes place. The phenomenon of child abuse and neglect has moved from a theoretical framework, where we looked at individual disorders and pathology in parents, toward a focus on more extreme disturbances of child rearing—often part of a con-

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Cathy Spatz Widom served as a member of the Panel on Child Abuse and Neglect, which produced the report summarized here (Anne C. Petersen and Rosemary Chalk, editors; Washington, D.C.: National Academy Press, 1993).

text of multiple family problems, such as substance abuse, mental illness, stress, or poverty. I'm not going to talk too much about theory, because I really want to focus on consequences.

Research in this field is beginning to demonstrate that the experiences of child abuse and neglect are a major component of child and adult mental and behavioral disorders. Research has suggested both a variety of short- and long-term consequences. Physical consequences range from minor injuries to severe brain damage and even death. Psychological consequences range from chronic low self-esteem to severe dissociative states and to higher rates of suicide attempts. The cognitive effects of abuse range from attentional problems and learning disorders to severe organic brain syndromes to low IQ and reading ability levels that persist very dramatically into young adulthood. Behaviorally, the consequences range from poor peer relationships all the way to extraordinarily violent behaviors. So the consequences of abuse and neglect not only affect the victims themselves, but also the larger society in which they live.

I want to talk to you and tell you about some of these consequences that are of a particular concern for our meeting here today and tomorrow. On the basis of some recent research that was funded originally by the National Institute of Justice, we found clear evidence that there is an increased risk of becoming a delinquent—that is, having an arrest as an adolescent—if one is abused or neglected as a child. The research was a prospective, longitudinal, cohorts-designed study with a large sample of abused and neglected children and a control group that was matched on the basis of age, race, sex, and approximate social class. Thus, the rates that I am reporting are independent of the characteristics of people that we already know are correlated with risk of arrest for delinquency.

This research showed a 53 percent increase of arrest for delinquency for abused and neglected children over the control children. Similarly, there was an increase in risk of arrest as an adult—38 percent over the matched controls. And there was also an increased risk in arrest for violent behavior of 38 percent. And, as you know violent *arrests* represent probably only the tip of the iceberg in terms of the kind of violent behavior that may be occurring in households and in neighborhoods. Abused and neglected children also get started committing crimes earlier, and they also are more likely to become chronic offenders.

So when we talk about violence I suggest, and our panel report suggests, that it's important to look at these abused and neglected children. And it's not just the physically abused children—although they do have the highest risk—but it's also the neglected children. Given that almost half of the officially reported cases of abuse and neglect in the United States are neglect, and that the smaller portions are physical abuse and sexual abuse, it seems very important to not ignore the cases of neglect, although they often

are not as sensational as the cases of physical abuse and sexual abuse that receive so much attention.

Even for people who have low expectancies for getting into trouble—that is, girls in general have a much lower risk of being arrested—the effects of being abused are also very dramatic. We found a 77 percent increase for girls' having an arrest as a delinquent. One interesting finding is that this increased risk in juvenile violence is gender-specific for females; we don't see the same increase in juvenile violence for the abused males.

In this research there is also a puzzling race-specific effect, which we cannot explain, but which I would encourage everyone to think about more carefully. This effect suggests the need to be very sensitive in terms of the way we respond to abused and neglected children at the very earliest stages—so that when we first hear of a case of abuse and neglect, if we have services available *before* detaining children, we need to offer these services equally to black and white children.

Another thing that you have probably assumed, but for which we now have fairly good evidence, is that abused and neglected children are at increased risk of running away. And running away puts these already vulnerable children at further risk, since many of them report personal victimizations *after* they have run away.

I suggest to you that we need to be thinking about preventing child abuse and neglect before they happen. If we take the figure of an 11 percent arrest for violence through young adulthood and the figure of 1 million reports of child abuse and neglect per year in the United States, you can do the arithmetic to see the kind of violence bomb we are sitting on—if we do not do anything to prevent or intervene and provide services for these children.

In our report we have a chapter on prevention. I obviously can't talk about all the different prevention programs that have been attempted. Unfortunately, however, most of the prevention programs have not been evaluated, so that while there are many exciting and promising developments, we desperately need to have evaluations of these programs.

I do want to talk to you about one program that has been evaluated—although it's not a conclusive evaluation—and it seems to have some promise for the prevention of future maltreatment. This is a study by David Olds and his colleagues at the University of Rochester. It was originally done in Elmira, New York. The population is largely white and rural, so one might think that it does not have too much of a problem in terms of child abuse, but it was actually rated as having the highest reports of child abuse and neglect in New York State for approximately a 10-year period and also a very high rate of poverty. In that program, researchers systematically assessed the advantages, the effects, of using nurse home visitors, beginning with a pregnant mother. These women were environmentally at risk—that

is, they were poor, single, young, and had a low education. They didn't necessarily all have those characteristics, but those were the eligibility criteria for this particular study. In some cases the researchers provided services prenatally, and in others both prenatally and postnatally; they provided parent education programs; and there were other efforts to enhance the family and to provide social support. They also—for those of you in transportation—included an element of providing transportation to medical facilities. What they found in this very elegant study (and, in fact, there was a control group) was that these home-visited families showed reduced risk in the number of child abuse and neglect reports in comparison with the control population. And the reduction was the most dramatic in the group of families who were at highest risk. Now this project is being replicated in Memphis, Tennessee, with a quite different population, and we all eagerly look forward to the results. But I suggest to you that in thinking about the prevention of child abuse and neglect and the possible spillover effects to violence, this might be a worthy inclusion in your plans.

There is also a program that is in effect in Hawaii now—it's called the Hawaii Healthy Start Program. It is intended to foster healthy development and family self-sufficiency. And it is largely on the model of these nurse home-visiting programs. In the future we hope to be able to report back and to say whether these types of interventions will be able to reduce further child abuse and neglect and, ultimately, violence.

One implication from these findings is that interventions with childhood victims of abuse and neglect need to occur early, so that they can have an impact on early stages of development. Given the demonstrated increased risk associated with this victimization, police, teachers, and health workers need to recognize the signs of abuse and neglect and take action and intervene early. Later interventions in adolescence should not be ignored, but the later the intervention in a child's life the more labor-intensive and the more difficult the change process become. Particular attention needs to be paid to abused and neglected children who have behavior problems, with indications of these problems occurring as early as 6, 7, 8, and 9 years old. These are the children who are most at risk for becoming chronic runaways. They are the children who are most at risk for becoming chronic offenders and violent offenders. And they are the children who account for the multiple placements in foster care and the revolving door placements that you see. In comparison with other abused and neglected children, these children with behavior problems have the highest rates of delinquency, criminality, and violent offending. It is not the case that foster care necessarily leads to problems with children, it may only be for a subset of these children.

I want to repeat and emphasize that increased attention needs to be paid to *neglected* children. Neglect is almost three times as common as physical abuse and sexual abuse cases, and yet the rates of arrest for violence are

almost as high among these children as among the physically abused. We must not neglect neglect.

Finally, I'd like to encourage you to think more broadly about what you do to prevent future violence. There's a role for people in terms of community policing. We need to be creative. We need to get involved. You are the people who are making hundreds of crucial decisions each day about the lives and futures of these children. We are hopeful that we can design interventions to prevent future violence.

Thank you.

LOSING GENERATIONS: ADOLESCENTS IN HIGH-RISK SETTINGS

Joel F. Handler

The concern of the Panel on High Risk Youth was the large and increasing numbers at-risk young people.

Most research concentrated largely on why individuals engage in high-risk behavior. As we worked, the enormous power of settings in shaping adolescent lives became apparent, It also became clear that the critical settings of adolescent life had deteriorated sharply over the last two decades. It was these settings that became the focus of our report.

Adolescents depend on families, neighborhoods, schools, and health systems. All of these institutions are now under severe stress. As the fault lines widen, more and more young people are falling into the cracks. Institutions and systems initially designed to help high-risk youth, such as juvenile justice and child welfare, have instead become sources of risk.

The social forces that are straining these institutions are many and complex, but they are all influenced by the relentless decline in income of families with young children. Family income is the single most important determinant of the settings in which children spend their formative years. Over the past two decades, the real incomes of young families have declined by almost one-third. Today, almost one-quarter of the families headed by a young adult have incomes below the poverty line.

Growing up in or near poverty exacts a heavy toll on children and adolescents. Adolescents from low-income families are more likely to have physical and mental health problems, to exhibit delinquent behavior, to show low academic achievement, and to drop out of school. They are less likely than their higher income contemporaries to get jobs. The numbers of poor adolescents who are unprepared for the world of adult work has grown alarmingly. Without a stable connection to the workforce, one remains outside mainstream society.

One-quarter of American children now live with only one parent, and poverty rates are almost six times higher for single-parent families than for two-parent families. Studies suggest that children of single parents are more likely to engage in such high-risk behavior such as drug and alcohol use and unprotected sex, to drop out of school, and to commit suicide.

Joel F. Handler served as chair of the Panel on High-Risk Youth, which produced the report summarized here (Washington, D.C.: National Academy Press, 1993).

Children born to adolescent mothers face the highest risk of failing to become successful adults.

Poor children are likely to grow up in socially disorganized, racially segregated neighborhoods, wit a high risk of becoming victims of drug-related violence, perpetrators of such violence, or both. These children are likely to go to schools that have fewer resources than those in more affluent neighborhoods. Although public schools have traditionally been viewed as the institutions through which poor children can rise above their socioeconomic roots, schools in poor neighborhoods have not in recent years been able to keep that promise. The many problems that poor students bring to the doorsteps have in most instances overwhelmed the resources and best efforts of the schools. And, unlike many industrialized countries, the United States does not provide an institutional bridge to help adolescents who are not college-bound make the transition from school to work.

The interplay of these conditions creates very different developmental opportunities for adolescents according to the income and race of their parents, the communities in which they live, and whether they live with one or both parents. Children born into poor families, living in high-risk neighborhoods, and attending poor schools know that their opportunities are limited, and significant numbers become alienated, lose hope, and fail to acquire the competencies necessary for adulthood.

How can we strengthen the institutions adolescents depend on and reduce the risks young people face?

Although it is quite true that these issues need more study, some of the problems are so acute and their effects so destructive that to delay action would needlessly endanger the future of more children. The report includes an agenda for further research and describes directions for change in the 1990s and beyond.

First, we must address the issue of supporting families. We must keep in mind that a rising economic tide will not necessarily lift most poor families out of poverty. Both the proportion and total of families living in poverty increased during the long period of economic expansion in the 1980s. Targeted intervention will be needed to enhance people's skills, provide entry-level job opportunities, and improve support services, such as child care. Income transfer programs will also need to be improved to assure families an adequate standard of living, safe housing, and access to essential services, such as health care. In designing these program and policy responses, care should be taken to encourage rather than punish the formation and maintenance of two-parent households.

Second, the crumbling infrastructure of inner-city neighborhoods must be dealt with. Affordable housing and safe recreational opportunities are urgently needed. Residential segregation must be addressed by all levels of

government through incentive programs and the vigorous enforcement of fair housing laws and other civil rights laws and regulations.

Third, young people must have access to services that respond to the major threats to adolescent health—illicit drug use, cigarette and alcohol use, violence, teenage pregnancy, and emotional distress. But service programs will not be effective if they target just one particular high-risk behavior, such as drug use; they need to take a holistic approach to adolescents' life circumstances.

Although rigorous research of service programs is thin and often inconclusive, most experienced program practitioners agree on the importance of a sustained relationship with caring adults; opportunities for young people to succeed and rewards for those successes; opportunities to contribute and to feel in control; and opportunities to develop trust relationships.

Fourth, there is no integrated health or mental health system in the United States. Programs and treatments are built around specific pathologies. There is inadequate insurance and lack of preventive coverage. About one-third of parents cannot afford health insurance for themselves or their families. Overall, the system is uncoordinated and access is difficult for adolescents. The response to the major threats to adolescent health—substance abuse, violence, pregnancy, and emotional distress—is inadequate.

I am encouraged by the President's initiative in health care reform and what seems like a consensus on the need for universal coverage. However, for adolescents, insurance coverage, by itself, is not sufficient. Services must be available that emphasize disease prevention and health promotion. Moreover, these services must be consistent, comprehensive and coordinated, especially preventive services.

The single most important proximate threat to the lives of inner-city youth is the proliferation of firearms. The issue of guns requires urgent national attention. Measures to disarm this population must be explored.

Fifth, despite the wide and varied efforts at school reform and the increasing use of schools for preventive health services, sex education, and so forth, these reforms, for the most part, have not addressed the problems of inner-city youth. Only a few jurisdictions have addressed the politically explosive issue of inadequate school funding. School-based management and parental involvement cannot substitute for inadequate resources. There are serious questions about the impact of various choice proposals on the poorest schools in the worst neighborhoods.

Insufficient attention had been paid to the effects of instructional practices on the school performance of low-achieving schools. In fact, schools continue to use counterproductive interventions—such as rigid ability grouping (or tracking), grade retention, "pull-out" Chapter 1 programs, and categorical dropout prevention programs. Some schools and districts are experimenting with alternatives specifically focused on improving the achieve-

ment for at-risk children and youth—for example, heterogeneous and cooperative learning, the use of "bridging classes" rather than grade retention, and more academically oriented curricula.

We must remember that less than one-quarter of young people leaving high school will complete a 4-year college degree. There must be improved mechanisms to assist these people to prepare for and find entry-level jobs with a future. Research in other industrialized countries has found that the greatest successes are those programs that prepare young people for employment, but also include an explicit goal of facilitating overall youth development. What is needed are integrated and sequential academic instruction, occupational training, and work experience. The traditional approach—single-component programs usually of short duration—have few lasting effects.

Sixth, the report identified a number of ways in which the juvenile and criminal justice systems fail to intervene before adolescent offenders become fully enmeshed in the adult criminal justice system. We are all painfully familiar with the high proportions of inner-city youth, especially minorities, who have had official contact with the criminal justice system, and these contacts, in effect, mortgage an adolescent's future by jeopardizing long-term employment prospects. Particualr attention should be paid to ways in which the justice system seens to exacerbate racial, ethnic, and socioeconomic variations in life chances. We recognize that the criminal justice system is overwhelmed and is in need of considerable resources as well as reform. At the same time, we need to develop alternatives to conviction and incarceration.

Seventh, like the criminal justice system, the child welfare system is overwhelmed by rising caseloads. Adolescents seem to fare particularly poorly in the system—with mutiple placements and poor outcomes. There are conflicting pressures and ccntroversies over the priority of family preservation and the need to strengthen families. But there is little research documenting the comparative effectiveness of alternative strategies, which severely limits policy and program initiatives.

In conclusion, one cannot emphasize too strongly the harmful effects of discrimination. A single act of discrimination—be it the denial of a job opportunity or the denial of housing in a sefe neighborhood—can have a powerful effect on an adolescent's life opportunities. Cumulativety, acts of discrimination create large socially and economically disenfranchised groups and blight the developmental opportunities of many American youths. Essential to the success of all efforts to improve the settings for adolescents is strong enforcement of laws against racial discrimination. Continuing efforts to abate discrimination must be made at all levels of society.

INNER-CITY LIFE: CONTRIBUTIONS TO VIOLENCE

Joan McCord

Joel Wallman of the Harry Frank Guggenheim Foundation deserves credit for bringing together the authors whose work will appear in "Inner-City Life: Contributions to Violence." In addition to editing the volume, I am writing the introductory and concluding chapters. The book draws attention to circumstances in urban America that contribute to contemporary violence and suggests means for its reduction.

"Inner-City Life: Contributions to Violence" begins with a chapter on historical and cross-cultural perspectives, setting violence in America into a larger framework. After this introduction, Eli Anderson takes a microscope to urban cultures that seem to breed violence. Rob Sampson then provides a multilevel examination of how communities, families, and individuals work through one another to diminish or increase violence.

Beginning with a chapter by Ron Slaby, who describes child development in inner cities, subsequent chapters focus on individuals. Terri Moffitt marshals evidences regarding neurological and psychological links to violence; Felton Earls and Jacqueline McGuire present a public health perspective on child abuse; and Nancy Guerra examines programs designed to reduce violence in urban America. The book ends with a summary that sets an agenda for improving life in inner cities through reduction of violence.

The common belief that U.S. cities have high crime rates is warranted. In fact, Al Reiss (1990) refers to crime rates in the United States as "outliers." What seems to be less widely known is that violence is not a new phenomenon in the United States.

Illegal violence has been evident through most of the history of the United States. Hollon (1974) identified 327 vigilante episodes responsible for 737 deaths between 1767 and 19190. Between 1834 and 1869, Boston, New York, Philadelphia, Cincinnati, St. Louis, Louisville, and Vicksburg were scenes of serious urban riots. Catholics, blacks, Irish, Mormons, and foreigners were among the targeted victims of mobs. Gurr (1989) reported more than 70 riots in New York City between 1788 and 1834, almost fourscore riots by whites against freed slaves in the South within 10 years after the Civil War, 3,400 lynchings of black Americans between 1882 and 1951, and the violent history of labor organizing between 1870 and 1930.

Joan McCord is the editor of the book summarized here (New York: Harry Frank Guggenheim Foundation, 1994).

Throughout American history, protest movements turned to violence after civil attempts to achieve their goals had failed. Shays' Rebellion of 1786, an early sign of the agrarian movement aimed at changing laws to permit the use of paper money (Szatmary, 1980); the Whiskey Rebellion of 1794 expressing dissatisfaction with taxes imposed by a central government (Slaughter, 1986); anti-abolitionist riots of 1834 and the Draft riots of 1863 in New York City (Bernstein, 1990) are among the prominent early examples of politically motivated violence. Violent strikes form an important part of the American labor movement, with major strikes against the railroad in 1877 and a general strike in 1910 (Haller, 1973). In reviewing the historical pattern of violence in the United States, Brown (1989:26) noted: "Thus, given sanctification by the Revolution, Americans have never been loath to employ unremitting violence in the interest of any cause deemed a good one." The May 13, 1985, bombing of the house belonging to Move members in Philadelphia and the April 19, 1993, attack on Branch Davidians in Texas seem to confirm the point.

Blacks have been a part of American history since the early settlers arrived in Virginia. "The Negro helped to make America what is was and what it is," noted Quarles (1964:7), an historian trying to correct the silence about contributions blacks had made to what is right in America. When the Civil War began, there were 488,070 free blacks. In Chicago, where a small pocket of free blacks had formed a community, "the laws of the state forbade intermarriage and voting by Negroes. Segregation on common carriers and in the schools and theaters was widespread" (Drake and Cayton, 1945/1962:41). In Philadelphia between 1838 and 1860, while occupational opportunities for whites were increasing, "blacks were not only denied access to new jobs in the expanding factory system . . . they also lost their traditional prominence in many skilled and unskilled occupations" (Hershberg, 1973). Even after the Civil War, blacks were largely excluded from educational institutions and white collar occupations (Horton, 1993; Kirschenman and Neckerman, 1991; Lane, 1986; Steinberg, 1989; Thernstrom, 1973).

In counterpoint to this picture of inequality, American democracy sets out an ideal of equality. A presumption of equality underlies the belief that anyone can be successful. Being successful is, on this assumption, a sign of character and the proper basis for self-esteem and privilege.

Despite the importance of success, criteria marking success are difficult to discern in the United States. Small differences—a carpet, a larger desk, a name on the door—mark rank within organizations. These differences, however, are likely to have meaning only to a limited audience. Since subtle symbols of status are difficult to recognize in America, wealth and property therefore become the marks of status.

Coupled with the rhetoric of equality, the unequal distribution of goods represents injustice to many who are poor. This perception of widespread

injustice tends to be confirmed through television—which shows wealth without labor, and violence often as justified.

This history of unequal opportunities and unequal benefits raise doubts about participating in a social contract. Yet such participation is necessary to avoid the Leviathan.

From his work on the streets of Philadelphia, Eli Anderson has gathered rich illustrations of the ways in which a street culture can adopt a code of violence. He talks about the importance of respect—by which he means respect in the local community.

Carrying oneself as though ready to fight may be a form of defence—or a signal to others to attack. The code of the street is also a code of exposure. In this culture, avoiding fights may result in dishonor.

The population of inner cities can be divided into two types of families. Decent families, who are ostensibly opposed to the values of the street code of violence, reluctantly encourage their children to learn it so they can negotiate in the city.

Other families fully embrace the code and actively socialize their children into it. The structure of the inner-city family, the socialization of its children, the social structure of the community, and its extreme poverty can be seen to facilitate the involvement of many maturing youths in the culture of the streets.

Many who live in inner cities believe in "the Plan." The Plan involves a genocide campaign against blacks. In order to protect themselves, some argue, blacks must take the law into their own hands.

Anderson suggests that to solve these problems, we must rebuild the social context of trust in the urban environment. We should reinvest in the cities, offering growth, development, education, and training.

Community structure is important mainly for its role in facilitating or inhibiting the creation of social capital among families and children. Concentration of poverty has multiplicative effects—bringing together blacks from single-parent families, the jobless, and the poor. With concentrated poverty, there are few socialized models to follow. Getting help from neighbors seems difficult.

High-risk areas are likely to increase probabilities for having babies who lack appropriate stimulation or who suffer neuropsychological impairment (from whatever source). Prenatal health problems, nutritional deficits, and exposure to toxins may increase risk for developing antisocial aggression leading to violence.

Programs designed to reduce antisocial behavior or to improve the well-being of those living in inner cities have not been well served in terms of evaluations. Preschool health-related home visits have gains that seem to be largely short term.

Not all preschool programs are effective, though High/Scope seems to

have been so (Weikart and Schweihart, 1992). We need to learn what types of programs work.

Social skills training does not seem to be effective for inner-city children. In fact, there is some reason to suspect that when aggressive children are helped to become more socially skillful, the result may be increased aggression among their peers.

Secondary school prevention programs (e.g., attention control) have rarely received long-term evaluations. A comprehensive project in which children were given a range of services including daily feedback on school behavior and periodic parent-school meetings (Bry and George, 1980), according to Guerra, seemed to have benefits extending for 5 years.

Parent training appears to have some short-term gains, but low-income families are particularly difficult to reach. Recent evidence also suggests that parents who reject their own children and treat them inconsistently respond positively and consistently to other children, thus showing that they do not lack the skills for which they are being given training (Dumas and LaFreniere, in press). Guided group interaction appears to have had damaging effects (Gottfredson, 1987).

Nancy Guerra identifies two approaches as promising. One combines teaching about effects of gang participation with after-school athletic programs. Evaluations, however, have yet to confirm this impression of promise.

The other is a School Development Program, in which three teams have been created to address problems of the community by eliciting opinion from the community. These teams are designed to improve schools, to improve mental health, and to encourage paren participation (Comer, 1988). Again, unbiased information is awaited.

In sum, we desperately need good studies. Expert opinions should not continue to be the basis of choice for how to cure the nation's violence. Just as we protect society from innocuous and harmful medicines by first testing them and measuring their effects, we ought to be assessing our social programs for safety and potency before accepting them as effective. With properly designed studies, we can learn about the causes of violence by learning how to reduce it.

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